

D E B A T E S
O F T H E
House of Commons,

From the Year 1667 to the Year 1694.

COLLECTED BY THE
Hon^{ble} ANCHITELL GREY, Esq;

WHO WAS
Thirty Years Member for the Town of DERBY;

CHAIRMAN of Several COMMITTEES;

A N D

Decyphered COLEMAN'S LETTERS for the Use
of the HOUSE.

In T E N V O L U M E S.

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DEBATES IN THE House of Commons,

From the Year 1667 to the Year 1694.

Tuesday, April 13, 1675.

The House met [† When the King in his speech declared, "That he would leave nothing undone that might shew the world his zeal for the Protestant religion, as established in the Church of England, from which he would never depart, recommended to them the condition of the fleet, and, above all, such a temper and moderation, as might disappoint the expectations of those, who could hope only by violent and irregular motions to prevent the bringing the session to a happy conclusion*."]

Resolved, Nem. Con. That the humble and hearty thanks of this House be returned to his Majesty, for his gracious promises and assurances expressed in his speech, to preserve and maintain us in the established religion, and our properties according to law; and for his calling us together at this time for that purpose.

The House sat April 14, 15, 16, and 17, but no Debate is taken notice of till]

Monday, April 19.

The *Habeas Corpus* Bill was read the first time, [being] the same that was brought in the preceding session.

† "In April, 1675, a session of parliament was held, as preparatory to one that was designed next winter, in which money was to be asked: But none was now asked; it being only called to heal all breaches, and to beget a good understanding between the King and his people." — *Burnet.*

* "Plain as this text was, the Lord Keeper was ordered to add his comment, which was so copious, that it takes up no less than 16 folio pages, every one of which is garnished with the flowers of rhetoric, and withall so void of matter, as scarce to afford pretence or excuse for an extract." *Ralph.*

Another Bill was read against levying any tax, subsidy, or impost, without an act of parliament for so doing; and not to be levied in any other manner under a penalty of high treason.† The same was brought in the preceding session.

SIR Robert Howard.] The thing aimed at in this bill, is rather shaken than reformed; here is in it encouragement to resist the levying of money, perhaps in the government of a parish on necessary occasions, and such as raise money so, may be within the penalties of the bill, as it is penned.

Mr Sacheverell.] Rises up upon *Howard's* expression of "encouragement to resist." There is no such clause in the bill. This is no new thing, it has its precedent out of six laws now in being. In 5 Eliz. "It being lawful to withstand" 20 Hen. VI. ch. 8. "Purveyors may be resisted taking above such a value" *Magna Charta*—5 Edw. III. ch. 7.—23 Hen. VI. ch. 2. "the king's purveyor doing contrary to that statute, all the towns thereabouts may resist the purveyor."

Sir William Lewis.] To Order—The second reading of the bill is proper for these Debates, but now only whether to read or not read the bill a second time.

Mr Sawyer†.] Good caution has been given not to undermine the government; the house was always cautious of it. It was noised the last session that these bills were the cause of our prorogation—It creates ill jealousies—When we come to debate the particulars of the bill, the inconsistencies of the Bill with the government, it will be considered maturely—But he finds little in the bill, either impracticable, or inconsistent with the government; it only puts penalties upon known laws.

Mr Sec. Coventry.] Numbers of people being concerned in levying of taxes, the bill should be maturely considered, and gentlemen prepare themselves to speak to it, and have time to consider.

[The Bill was ordered to be read a second time.]

* This is called in the Journal, "A Bill to prevent illegal exaction of money from the subject."

† Afterwards Attorney General.

Sir

Sir Thomas Clarges.] [Occasionally] Hears of a Thesis printed and published at Leyden, in Holland, and he that maintained it in that university, and printed it, has 700*l.* given him here for doing it, his name is Hamilton, a Scoteman. [More of this hereafter.]

Sir Thomas Littleton.] Moves in behalf of the kingdom, and the whole Christian world, (*France* excepted) for re-calling the *English* forces in that King's service; that the *French* may be no farther encouraged to ruin us, and the rest of their neighbours. 'Tis expected they will invade *Flanders*.—Watching the proceedings of the House in this critical time. Would not by this motion endanger a prorogation, has not that in his thoughts, hopes it may be a good session, declares it, and therefore if any thing concerning the fleet may be enquired into, would come to it fairly without surprize, and not be upon a rock at the latter end of a session.—Would not surprize nor be surprized.—Moves not as to the *Dutch* so much as in relation to ourselves; sees nothing in them but encroachments upon public treaties.—He sees the *Dutch* ambassador great with our ministers, and with the *French* ambassador.—We have run into the error manifestly of assisting the *French*, and would avoid it. In the Palatinate business *Spain* then stood in the room of *France*, and was then as formidable as the *French* are now, ready to swallow up the world. Addresses were then made to K. James about it, but were denied, till he, in one of his speeches, saw his error, and redressed it. In Cromwell's time, something of this was done, as if it were the fate of *England* under all governments. He does not design a breach of peace with *France*,—the *Dutch* except against our sending forces into *France*, and so does *Spain*. This lies as a bait and allurement for more to go over. This summer there will be 10000 of the King's subjects, *English*, *Scotch*, and *Irish*, in a body, in the *French* army. This is so far from a breach, that it preserves peace. Though there be no article against sending men into *Holland*, yet men are deterred from it, and none go over. Grotius tells us “That if a Prince be in a formidable posture of war,

Debates in Parliament in 1675.

“ ready to devour his neighbours, no Prince is obliged to “ stand the blow.” The request of re-calling these men is modest and moderate. If the *English* and *Dutch* say the word, no man can come upon our coasts. Moves only for recall of these forces, and doubts not but the dutiful advice of the Parliament will be preferred before any council about the King.

Lord Cavendish.] The danger of *Flanders* falling into the *French* hands, is what he most apprehends. If one Prince has been able to manage a war against Christendom with such success, we may justly apprehend it. 'Tis our interest to support the Protestant interest, which *France* totally destroys. Seconds the motion.

Mr Sec. Coventry.] Desires leave to make a small deduction how the affair stands—Would not put the King upon the inconvenience of re-calling them all, but such as the King lent, to be recalled; they are the K. of *England's* subjects, but the K. of *France's* soldiers. Are they of a number to break their way home? All law of armies will hang them if they should attempt it. Fears that men go over, and complaint is made of it, but still asks where are they forbidden? In *Ireland*, and all places, ambassadors apply to the King's Ministers, and wishes they would apply no where else. But to come on this instant upon this—Will not you alarm the King of *France*? And yet you shall not have a man come over. *The King in the Gospel considered whether with his 1000 men, he could meet the other with 10000.* The King of *France* may make a peace with the States before you have passed these Bills before you.—That now you will take these men away levied with leave. Will you do this before you have money or men? Let us take our own beam out of our own eye, then shall we see the better our brother's moat in his—but till you are well, and the king confide in you, and you trust him, you are not to talk of the King of *France*.

Sir Thomas Meres.] Acknowledges himself altogether unable to enter the lists with *Coventry*. This address to the King “for re-calling these men out of *France*” concerns

cerns the very being of *England*, and now is a fit time to do it. The next session will be too late. These walls will witness against us, and the ghosts of our ancestors will rise against us if we do it not. 'Tis said "Why should you not assist the *French* with those that are now here, his soldiers?" It seems then that the people of *England* are his subjects. You may discharge those that are there, and prevent more going over; by doing so, other nations will not think us asleep, dull, and phlegmatic. He conceives this vote will not conclude a sudden peace, betwixt the *French* and the *Hollanders*, but hopes the confederates falling flat, this vote will encourage them. 'Tis touched as if we were governed blindfold, and that 6 or 7 men must govern all. He is glad to enquire as country gentlemen used to do. Formerly this House did understand foreign affairs as well as any council. The suffering these men to be in *France* is not for the interest of religion. That has been our interest at all times since the reformation. 'Tis the King's glory to defend the Protestant religion, and his greatest interest. The King of *France* is now the great patron of the Popish interest. In their treaties with us, when we joined with them against *Holland*, one of the articles was "that in all towns surrendered them, half the churches should be Popish." Whoever will support the Protestant religion, must not support the *French* interest, and he lays that down for a principle. The edict of *Nants* [has been] violated upon 100,000 Protestants. We all know what became of them in *Piedmont*. In *France*, Protestants are hindered from all manner of offices of value. They are not to marry Papists, and after having become Papists, 'tis death to turn Protestants again. They are governed there by citadels, and by military power. This is against your trade—by the *French* correspondency you have lost the *Spanish*, the most advantageous trade we have. The *French* are industrious in it. The *Spanish* more heavy, and not so apt. Ten thousand of our men are in *France*—Would we had them in *England*! Though this town has

too

too many, yet we want men all over *England*. We are their neighbours, and it is extremely dangerous they should get *Flanders*, which would help them to the trade of the whole world. Their fleet is now 100 men of war, and fears that our fleet is not so great by a third part. The King of *France* is setting up for the Western empire. Observe how the *French* have broke all treaties, and at last ours, both by sea and land. But imagine them faithful and kind, 'tis as dangerous to our interest. They have destroyed their three estates, an ill example to us in government. 'Twas always the opinion of our ancestors to keep the balance equal betwixt *France* and *Spain*.—To which we ought to have a deference. The permitting these forces to be in the *French* service, must be ill taken by our allies. The *French* already scorn us in some of their books; let us not make them greater than they are by permitting these forces to be in their service. But seconds the motion for “Address to the King for ‘their recall.’”

Mr Sec. *Coventry*.] *Meres* desires “that he should not support *France* nor the Romish religion.” He said no such thing, nor made one motion to support *France*. Pray tell him what he said amiss.

Sir *Thomas Meres*.] Intended it not to that Gentleman then, but to all advisers of such things in general.

Sir *Thomas Littleton*.] Every body knows of these mens going over, as much as they that ought to know it, and want of taking notice of it by them that ought to look to it, is the cause of it.

Mr *Wood*, a ship wright.] Desires that a passage in my Lord Keeper’s speech may be remembered “that Jo-“seph, in time of plenty, provided for famine,” and though we are in peace, would think of building ships.

Col. *Strangways*.] Is glad to see we begin to come to our wits again. Should you advise the King of *France* not to agree with *Holland*, you engage our King in a war. It concerns us to look to ourselves, lest we should be engaged in a war with *Holland*, and therefore would petition the King to put a stop to any more of his subjects going over

over to the *French* service.—The scale now is turned from former times.—*France* is grown more powerful than *Spain*.—If the *French* should take *Antwerp*, and be masters of the *Scheld*, they will be formidable.—Is sure that a great many of our men are gone over into *France*, and few the other way into *Holland*. But is glad to see the House awake in it. Would have trade considered; for silk, wine, and linnen, that we have out of *France*, outbalance all your trade together, with brandy, which carries away not only your money, but your senses with it.

Mr Sec. *Williamson**.] As to “recalling our forces al-ready there” we cannot do it, and as to “stopping a ny more going over” it was the last night’s business. If there is any countenancing their going over, it is on the other side to *Holland*—Would do equal to both. Every man has his opinion, and he has his. He fears we ought to have an eye upon some others of our neighbours as well as the *French*. Our fears are on the other side, (the *Hollanders*) and ’tis the opinion of the council already. This cannot be a war of religion; though the *Swedes* have declared themselves for *France*, yet their Ambassador has cast in a memorial to the Emperor for the Protestants of *Hungary*.

Sir *William Coventry*.] Is glad the *Swede* takes such care of the Protestants of *Hungary*—Should have more believed his care of the Protestant interest, had it been as well for the Protestants of *France*, as those of *Hungary*. What he does is only his interest. The Secretaries object, “that it is a thing not to be done.” He will not oppose what Privy counsellors affirm, but ’tis an odd thing for our King’s subjects to sell their allegiance to another King. Though they shouild be naturalized by the King of *France*, and the Parliament of *Paris*, that does not absolve their allegiance here, and he thinks that the King’s Ministers ought to have taken care of their return upon

* The Earl of *Arlington*, after his on his refusal, bargained for that impeachment, having the King’s employment with Sir Joseph Williamson leave to sell his place, he offered it son. See the Life of Sir William to Sir William Temple for 6000*l.* and Temple.

the interest of their Prince concerned. If that has not been done, 'tis selling these men to slavery. 'Tis safer to recall them while the King of *France* has an enemy ;—our safety better while he has work on his hands, than when he has none. If *France* refuse to let them come home, he gives cause of offence to *England*, and this is not safe for him to do. The opinion abroad is, that there is such a misapprehension of our interest, that there is not an indifference kept between the *French* and *Dutch*. If our men are under such an unlucky propensity that they will go into the *French* service against their King's will, would move for an Act to make it highly criminal to go under a foreign Prince's service without allowance from the King.

Mr *Garroway*.] Our fears of ruin from the *French* are in every body's mouth. The question before you is “for “the recall of these men from the *French* service.” For soldiers to go over and have leave to fight against Protestants, is a corrupt school to teach them to despise religion and property. If they are sent by public authority, hopes such a provision, as is fitting, is made for their return. If they go privately, they ought, at the sea side, to take the oath of allegiance and supremacy, or they are felons if they return. Knows not what condition they are in. What compliment has the King of *France* made with *Liege* or *Flanders*? Whatever is before him he will take if he can, and if he makes peace with his enemies, we may be the next. Would have the address made to the King with all respect. They are gone over either by authority, or not. If by authority, hopes their return provided for; if not, they ought at their perils to come home. The *French* have remittance out of *Spain*, by bills of exchange, though now in war with them, 400,000 *per ann.* out of *Germany*, *Spain*, *England*, and *Holland* itself. People grounded on such a bottom dangerous to let be great. Would have a committee to draw the state of our condition in reference to *France*, and in the mean time would address the King for removing those forces.

[*Resolved*,]

[*Resolved,*] That an humble address be [presented to his Majesty] for the speedy re-calling of all his subjects [home out of the French King's] service, and for hindering any more from going over, into that service [for the future.]

Mr Powle.] More men may be transported into *France* before the prohibition comes from the King ; therefore would proceed with this presently to be presented, fearing that the influence of the *French* council is too great.

Tuesday, April 20.

[A Bill for restraint of building, inmates, and inclosures, near to the cities of *London* and *Westminster*, was read the first time.]

Mr Waller.] The law favours buildings. If you build with another man's brick or timber, the law gives you damage for it, but not the brick and timber. Again tis said "that these buildings make poverty."—We are undone in the country, without building—And yet not build at all. The relief of the poor ruins the nation—By the late Act they are hunted like foxes out of parishes, and whither must they go but where there are houses? We shall shortly have no lands to live upon, to relieve them, the charge of many parishes in the country is so great.

Mr Sawyer.] The Act for settlement of the poor, does, indeed, thrust all people out of the country to *London*. This Bill remedies the matter—By this increase of building, in a while the people will come into such disorder as to destroy the buildings themselves.—Is for retaining any Bill of public semblance; but is against erecting of offices in the Bill. That statute against tippling (now the licencing is set up into a kind of office) without restraint, is of no use.

*Mr Cbild**] Sixty years experience has made it evident, in fact, that rents have increased the more for building houses. In his memory there are not half the houses in *London* that were before. *London* has more inhabitants than before the fire—The circumference must be subservient to the center.

* Afterwards Sir *Josiah*, Grandfather to the present Earl of *Tilney*.

Mr Jones.] If increase of buildings makes the houses in *London* of better value, 'tis a great paradox. Where's the demonstration? Is it because rents fall every day? But if this Bill be so much against law as 'to give right away, is against it.

Sir Nicholas Pedley.] 'Tis said that the buildings are not a nuisance at common law. In *Q. Elizabeth's* time, they were judged a nuisance, and in *King James's* time. Not by statute.—But when a thing grows too big and inconvenient, 'tis a nuisance. The builders have been pardoned by Act, but for the future would prevent it.

[*Resolved,* That this Bill be withdrawn, and that a Committee be appointed to prepare and bring in a new Bill, upon the Debates of the House, to restrain the farther increase of building near the cities of *London* and *Westminster*, and to remedy the inconveniences occasioned thereby: And that it be referred to the same Committee to inspect the Statutes relating to the relief of the poor; and of the Statute of the 5th of *Eliz.* and all other laws which relate thereto, and to bring in a Bill to redress such inconveniences as they find in these matters.]

Sir John Prettyman's case, being a Member, and detained [prisoner in the King's Bench] upon execution [was reported by Sir Thomas Meres*.]

Mr Sawyer.] Whether this case be of the nature of privilege, or upon being outlawed before his election, is the question. To the law of Parliament the case of privileging belongs. But as to reason, no prescriptions show that ever it was done. Prorogations are of the nature of several Parliaments, and privilege commences as if it were a new Parliament 13 Hen. VIII. And in *Plowden's Commentaries* 79, being of the same nature with those cases of judgment and execution in time of prorogation. No injury can, by privilege, be done to an innocent person; your subsequent privilege cannot do wrong to another, a third person. Should it do so, the inconveniences were great. In effect, by allowing privilege in this case, you make "privilege of prorogation" equal to "privilege of adjournment." If you deliver a man in ex-

* It had been referred to the committee of privileges, the Thursday before execution

ecution, 'tis against what the law has vested the party in, and he loses also all the charges he has been at. There are judgments in the Case—*31 Hen. VI.*—The Speaker * was then taken in execution, in time of prorogation. 'Twas debated and referred to the judges, and reported by them to be according to law of Parliament, judged in the House of Lords. 'Twas then ruled that the Speaker should not be discharged; and the Commons thereupon chose a new Speaker. It may be objected, That this was a judgment given by the Lords.—But 'tis answered—The Lords were then the proper judges of it, but the judgment was confirmed by the Commons. Many cases that may be instanced, were in the time of privilege, when wrong was done by the aggressor.—To what purpose has the House, at any time, debated limitation of time of privilege, if out of the time you deliver the party? *Martin's case 28 Eliz.* There was then a case when a Member was taken within “14 days” on a prorogation, which was then the time of privilege. But about “20 days,” upon report of *Ferrer's case*, it divided the House in opinion, whether a time should be asserted, or not, for privilege, or defined. The first question was, Whether the House would assert a time? 'Twas resolved “No,—but a convenient time.” The next question was, Whether *Martin* was taken in that convenient time? “Yea”. But whether the party should be punished, because the case was doubtful, was the great objection. There is the same reason for the one as the other, that the Member might attend the House without disturbance. Before any person sits, he has privilege. The true reason why the person in execution should not be delivered, as the case is stated, is that the party should not be left remedyless.

I K. James—Sir *Robert Shirley* was in execution in the fleet four days. There was a *Habeas Corpus* granted to bring him to the bar. 'Twas then declared there should be a Bill, for the jailors and sheriff's indemnity. It provides that he may be taken again, after the session is over, “after

* *Thorpe.*

“ Par-

“Parliament.” No punishment for procuring such an arrest as that is.

Sir John Birkenhead.] Would know whether *Prettyman* is in execution for a debt owing to any of your members. That may alter something of his case.

Mr Sec. Coventry.] In case of a Peer’s eldest son arrested in execution for debt, if his father should die, and he become a Peer, he shall not come out of prison. And will you set up your privileges higher than where privilege is born with a man, and yet he cannot be taken out of execution? Take heed what ye do.

Sir Richard Temple.] All the ancient precedents, before the Statute of 1 King *James*, will not be of any great use in this business. Formerly the House had power of punishing the prosecutor that put the party in prison, but had no power to release the party. *Thorpe’s case* was a distinction between a debt to the King, and one to the subject, and yet has been over-ruled since. All precedents before 1 King *James*, are out of the case. The preamble of the Act is general and universal. *Sawyer* mistakes the case, for by this Statute “when privilege shall cease, the party shall be in execution again, all proceedings remaining as they were before,” and so persons concerned not be put to any new trouble of process. Would have one instance, let a Member’s taking be when it will, that ever he was detained, the Parliament sitting. ’Tis said, the party has an interest in the prisoner; so has the public likewise, and before the party had any, and you will not send a new writ, to chuse another in his stead. The case is of great weight, and he would not subject the keepers of prisons to any action of escape, but believes that persons taken in prorogation have been delivered out. The reason is the same whether the party is attached, the Parliament sitting, or not.

Col. Strangways.] We grant privilege in an adjournment. This case is privilege in prorogation. The privilege continues while he is a Parliament-man. Upon delivering him, the Parliament sitting, the Sheriff is cleared by the Statute of 1 King *James*. By suffering him to be

be detained, you deprive a county, or a borough, of a representative.

Sir Wm. Coventry.] 'Tis a tender argument to speak against the privilege of this House. Parliaments now are of longer continuance than formerly: and therefore 'tis an argument not to extend them more than formerly. The Member's (*Prettyman*) council quoted no precedents in the case to the committee. But something so applicable from the bar of the "case of a Peer's son" that he thinks we have no reason to extend our privileges more than they do. No man will doubt but that there is such a sleeping of privilege in prorogation, which, if awaked, must have power, not only to stop, but to reverse the course of law, or the next step to it, if it rises. If a Member be enlarged by privilege, it is restrained to those cases where, by that privilege, he might be before the Statute. You may say, that he may serve the execution again, when the Parliament is dismissed —But can the party catch him? He that took him before was innocent, and he must catch him. It may be he has nothing responsible for the debt, neither goods, nor lands, and nothing but his person to be had, and this privilege is during the whole Parliament. What may be the consequence of this? You would have often remedied buying of places in elections; this privilege will be a temptation to do it still, all debts being paid by privilege. This may tend to sending hither the most unfit men in *England*, and to put men upon breaking to be here. Let us not give occasion to people abroad to say we are rather extending than straitening our privileges, and never explaining them.—Considering especially, that men, by death of witnesses, (our privileges being longer now than formerly) may lose their lands, as well as their debts, and therefore would not agree with the Committee to send for *Prettyman* out of custody.

Mr Swynfin.] Agrees with the latter part of *Coventry's* speech, "That titles and estates may be lost by death of witnesses, when privilege continues long," and "that it it may be an invitation to bad men to come into Parliament." So that if any act of compassion to the subject could

could be made, to suspend privilege in some cases, would be glad of it.—But in this case of *Prettyman's*, believes it a right, and that when a Member is chosen, the town and the house have a right to that privilege. 'Tis granted that any Member, during sitting, has privilege; but here is the question, Whether a Member taken in execution out of privilege has the same right of being released out of prison, as in privilege? If it be allowed, how will it be answered upon an original writ out of time? If you make precedents in one case, you must do it in another. The objection of “a Peer's son,” spoken of, is not this case; his father living when he was in execution, he had no title to the Peerage, but this man has. The Lords cannot make him a new title. The reason of privilege is the public service of the house and place he serves for.—But one objection.—“Privilege is just such a thing as is found by precedent, and we have but one precedent that gives light, and that is *Thorpe's* case, the Speaker.” If this precedent had been since that Statute of 1 King *James*, no answer could be given to it; but it was before. But how appears it that there were no more precedents in the case? The reports are short; it appears not plainly that such as have been imprisoned were in time of privilege, but clear that they were delivered, the Parliament sitting, which then sat not long, and this case before us could not then arise. For as to the proviso in that Act to save the officers harmless, it may be out of privilege as well as in.

Mr Sacheverell.] Thinks not this case so different from *Thorpe's* case as is imagined, nor that of a Peer's son so different.—A Peer serves for himself.—If this releasing the person to attend here were to debar a man of his debt, would be against it. If his estate be not capable to make restitution, and he have neither land nor goods, it seems an Act of malice to keep him from hence.

Sir Thomas Meres.] If a man must be detained upon execution, tho' not mere process, 10, 20, 30 useful members may be taken out, to the destruction of Parliaments.

Sir Robert Howard.] Finds that we have nothing to resort unto in this business as a clear precedent.

Mr Serjeant *Crook.*] Did he think that this was *lex et consuetudo Parlamenti*, would not speak against it. He thought this case of *Thorpe* a settled and quiet case long. He was Speaker, and taken in execution, and a new one was chosen, before the Statute of 1 K. *James*. If once a Member taken in execution, were let out, or escaped, he was never to be taken again upon the same execution. It is urged that the kingdom loses a Member; you will allow breach of the peace above any privilege of Parliament.—The keeping the peace, the very being of the kingdom; there is no *supercedas* against execution, the very life of the law. Not *morando, eundo, redeundo, lex Parlamenti*, being the usage of Parliament. In so great a case as this, he doubts himself, in what he delivers, this place being the best school, and must learn here. Before 1 *James*, the person in execution being delivered, the sheriff brought his action against the jailor, and it was a crime and incapacity to take him again. Would not agree with the committee.

Col. *Titus.*] 'Tis no argument that you should takeaway this privilege, because it is inconvenient. Are there not greater conveniences that balance the inconveniences? You may be deprived of many Members of Parliament. Men may be clapped up that are against a Bill to be presented here. Better far a mischief on particulars, than an inconvenience in general.

The Committee was agreed with for the discharge of Sir *John Prettyman*. [On a division 143 to 67.]

Wednesday, April 21.

In a Grand Committee on the Bill of Popery. The clause for their discovery. Debate upon registering them at the Sessions.

Sir *William Coventry.*] The fear of driving Papists out of *England* is none at all. In Queen *Elizabeth's* time there was as zealous prosecution against them as now, and yet they were not driven out. As to the matter of easing them, what you have put upon them, or can, will not rid the nation of them. And now is an unseasonable time for registering

registering them at sessions, if you think their numbers may encourage them. You openly and barefacedly besides encourage them to persist in their religion avowedly ; and 'tis as much encouragement as is given to the Protestants. It lies in the power of our own clergy to detect any Papist whatsoever. In *London*, indeed, they remove often, and 'tis not so easy to do it ; but out of it, in country parishes, not a minister in a parish, but knows who is suspected for a Papist, or Fanatic. If my Lords the Bishops will give it in charge to their Clergy, and the encouragement of better livings for the minister's being active in it, or encouragement from preferments in the King's gift, this will operate not only for suppressing Papists but Fanatics.—Though this discourse be fitter for the convocation, yet, having no call thither, he says this here. If the Church of *England* will promote discipline according to law, they may exceed even the Fanatics themselves against Popery.—Does not reflect in this, as if the Church was not zealous.—He has never been at mass nor conventicle, and so may speak his mind with the more candour.—He believes that our Church has preserved more decency of ceremonies, than any Church whatsoever, and are so much the nearer the Church of *Rome*, they carrying some resemblance of theirs ; therefore 'tis absolutely more necessary for our clergy to carry the stronger opposition to Popery.—He has been formerly for the bill to ease dissenters, the more to strengthen our Church.—He speaks not this out of ill will to the Papists, but for the preservation of our Church.—He thinks this register may have more honourable ways, and be less subject to scandal, looking like toleration.—The composition* formerly made with Papists “to exempt them from farther prosecution,” the next Parliament said, looked like toleration.—It may make them bold-faced.—In Queen *Elizabeth*'s time, many came to church and occasioned compliance, and has reason to believe that a Church Papist may at last be a Church Protestant. If it be not their interest it may be ours that they should come amongst us.

* *Charles I.*

Mr Garroway.] Unless you distinguish what you have now of Papists, and what may be for the future perverted, the bill will be of little effect, and no way to do it but by a register. If you make the default of registering their names, at the quarter-sessions, a forfeiture of their whole estates, you may save the Clergy the labour of presenting them. We have fears of Popery, and fears of *France*, for they draw on one another and are alike to him. Would have this registering singly applied to the *Romish* religion, and no other dissenters—But of that hereafter. This registering cannot countenance Papists, for he would have it “that whoever shall be hereafter perverted, his estate shall go to the next a-kin, that is a Protestant;” which will be penalty sufficient for not registering their names, and for not being sheriffs and other offices, would have them pay a fine—And sees no danger in the register.

Sir William Coventry.] Temple desired “to know the Papists, to suppress them”—but we know them already, and all this while suppress them not. He thinks the matter of ease to them, by registering, is not at this time seasonable, but what they shall pay for offices is not yet revealed to us, nor many other things.

Mr Garroway.] All those of the *Romish* party that have made estates over in trust, will be upon register, and they, and their estates, the more easily found.

Mr Sec. Coventry.] You find great jealousies of them, and therefore “nothing to be done to them” looks like an encouragement. He would not have laws made, never to be executed. He would go between the two opinions of severity and remissness in dealing with them. Though he may have the luck of them that do so. Their attempts of abolishing the government were the cause of their severity against them in Queen *Elizabeth's* time. Would distinguish between Papists of this world, and those of the other world. Some are in *potentiā proximā*, and would distinguish such as will not have any dependence on the Church of *Rome* as to the government they live under, and such as will. These sort of men are in a sad condition; you ease them not here, and they

shall be burnt there—Would have some mark upon them, but not registering in general.

Sir *William Coventry*.] Shall always be as ready to make his apology to any Gentleman, to convince him if he can. What is the ease spoken of is not yet discovered, and can say nothing to it—But generally would ease their persons, and suppress their religion as much as he can.

Sir *Edward Dering*.] Though he speaks with great deference and respect to the movers of the register, yet he thinks you not ready for the question to be part of the bill. For in registering a man's name, as proposed, he exposes himself to all the laws in being. So the first step to this register must be to revoke those laws. Some alleviation of those laws most incline unto, but would have the thing clearly opened, and not pull down one house before we have another.

Colonel *Titus*.] What expect you by registering? That men should tell you we are liable to all the penal laws in being, against Popery. 'Tis, confess, and be hanged. Untill you tell them what ease they shall have for doing so, 'tis too soon for the question.

Sir *Thomas Meres*.] Moved that the Attorney General might not enter a *Nolle Prosequi*.

Which was, together with the Debate, referred to a Committee to draw up a Bill accordingly.

Mr *Powle*.] Reports Dr *Burnet*'s* examination at the Committee appointed for the address about the Duke of *Lauderdale*'s removal.

On the 27th*** last, Dr *Burnet* was, by Mr Secretary *Coventry*, ordered, in the King's name, to go 12 miles out of town. The occasion was from some words *Burnet* should say to a Peer, which were by him denied; whereupon *Burnet* petitioned the King, but was, by the Secretary, ordered 12 miles† out of town; speaking with the Secretary again, he told him "that the King's pleasure" "was changed from the 12 miles, to forbid him the Court" Since, the Duke of *Lauderdale*, in company of the Arch-Bishop of St. *Andrews*, and the Bishop of *Salisbury*, said "he would push the punishment farther."—That, in 1672, he attended the Duke of *Lauderdale*, at *Holy-rood House*, to intercede for some conventiclers,

* Afterwards Bp of *Salisbury*. † *Burnet*, himself, says it was "twenty." his

his kindred, and told him “ he feared if the security was great a-
“ gainst them now in the *Dutch* war, there might be rebellion.”
The Duke of *Lauderdale* replied “ he could wish that those rogues
“ would rebell, that he might send for some *Irish* Papists to suppress
“ them.”—As to the matter of the *Scotch* army, he is free to speak
of what others were present at, as well as himself; but what pas-
sed between the Duke of *Lauderdale* and himself, desired to be ex-
cused till the utmost extremity.

Mr Secretary *Coventry*.] Told *Burnet* “ That the
“ King had received some ill impressions of him for med-
“ ling with affairs which concerned him not, and ’twas con-
“ venient for him to go out of town.”—Thereupon *Bur-
net* desired to speak to the King, but the Secretary an-
swered “ he was not his accuser nor condemner, and could
“ not dispose of the King’s audience, but he would pre-
“ sent an address from him to the King.” *Burnet* sent
his petition, and *Coventry* delivered it. *Burnet* soon after
desired the matter in writing, which *Coventry* delivered
him from the King*—*Coventry* told him “ he would not
“ put the King’s words in writing he had not from his
“ mouth” and denies any order he had “ to forbid him
“ the Court.” That belongs to the Lord Chamberlain, or
Vice Chamberlain. He only advised him to absent him-
self.

[The Debate was adjourned to Friday.]

Thursday, April 22.

There having been a motion made at the beginning of the ses-
sion that certain records relating to the King’s passing such peti-
tions (so styled anciently, (now “acts”) as should be presented him,
should be searched, and reported, [the translations of several
Rolls brought in from the Tower, were read and delivered in this
day,] which were the following.

Rotul. Parl. 2 Ric. II. Num. 28.

“ Also the Commons supplicate, because petitions and bills put
in (or into) Parliament by divers persons of the Commons cannot
of the same, before this time, any answer have ;”

“ That of the petitions and bills put in this present Parliament,
and of all other petitions and bills that shall be put into (or in) Par-
liaments in time to come, that good and gracious answers and remedy

* *Burnet* says, “ that the Secretary knew it was against law, and there-
fore would not deliver it in writing.” See his *Hist. Vol. I. p. 372.*

to (or of) them be ordained before the departure of every Parliament, and on, or of this, due estatute be made in this present parliament, and entailed to remain for all time to come, if you please."

The ANSWER.

" It pleaseth the King that all such petitions delivered in Parliament, of things which elsewhere cannot be determined, good and reasonable answer be made and given before departure of Parliament."

Rotul. Parl. 36 Edw. III. No. 9.

First, " That the great charter, and charter of the forest, and the other statutes made in this time, and in the time of his progenitors, for the profit of him and his commonalty, be well and firmly kept, and put in due execution, without putting disturbance or making arrest contrary to them, by special command, or in any other manner."

The ANSWER.

" Our Lord, the King, by the assent of the Prelates, Earls, Dukes, and Barons, and the Commonalty, hath ordained and established that the said Charters and Statutes be held and put in execution, according to the said petition."

Rotul. Parl. 4 Hen. IV.

To the thrice excellent, thrice renowned, and thrice gracious Sovereign our Lord the King. Your poor Commons pray that the Statute made in the first year of the reign of the Noble K. *Edw.* your Grandfather, containing, " That none shall be distrained to go out of their counties, but only for the cause of necessity, of sudden coming of strange enemies into the realm ;" and the Statute made in the 18th year of the reign of your said Grandfather, " That men of arms, hoblers, and archers, chosen to go in the King's service out of *England*, shall be at the King's wages from the days they do depart out of the counties where they were chosen ;" and also that the Statute made in the 25th year of the reign of your said Grandfather, " That none be compelled to find men of arms, hoblers, nor archers, others than those which hold by such services, unless it be by common assent, and grant made in Parliament," shall be firmly holden and kept in all points safe, without being broken in any manner."

" And that none of your said Commons be distrained to go into *Wales*, or elsewhere out of the realm, contrary to the form of the Statutes aforesaid, and that all the convictions and writs made contrary to the said Statutes, and all the indictments and accusations, obligations, and tyes made by colour of the said Commons, and writs, with all their dependencies and circumstances thereof, may be revoked, cancelled, quashed, and annulled for ever, as things made against the law ; and that they may not be drawn into example

ample in time to come. And if any of your liege people be imprisoned, by force of your said indictments, or accusations, that they be presently delivered, and the said indictments held void."

- *The ANSWER.*

" The King consenteth to this law, with this, That always, by force or colour of the said supplication, or of any Statute thereupon to be made, the Lords or others, that have lands or possessions in the country of *Wales*, or in the marches thereof, shall in no wise be excused of their services and devoirs due of their said lands and possessions; nor of any other devoirs or things to which they, or any of them, be especially bound to our said Lord the King; though that the said Lords and others have other lands and possessions within the realm of *England*. Nor that the Lords and others, of what estate and condition soever they be, that hold by escuage, or other services due the King, any lands or possessions within the said realm, be in no wise excused to do their services and devoirs due of the said lands or possessions. Nor that the Lords, Knights, Esquires, nor any other persons, nor any of them, of what estate or condition that they be, which hold, or have of the grant, or confirmation of our said Lord the King, lands, possessions, fees, annuities, pensions, or other yearly profits, be not excused to do their services to our said Lord the King, in such manner as they are bound, because of the lands, possessions, fees, annuities, pensions, or profits aforesaid."

These records were first moved to be inspected by Mr *Sacheverell*, and also that they might be printed, but that, by some, was not approved of.

Mr *Sacheverell.*] If it give offence I will not press the printing them. But thinks the gentlemen near the King concerned in the advising the last prorogation, and therefore moved that of 2 *Richard II.* to be printed. Some of the other records are printed, and some not. In *Rushworth's Collection*, the arguments 5 *Caroli* one of them made use of in print. The King's Counsel, in the conference, then made exceptions, but admitted them to be law. In the construction they differed, but agreed them to be as they stand.

Mr Serjeant *Maynard.*] Is certain that some of these are printed, and some left out. The printed: "No man shall be compelled to bear arms; the commissions for so doing void (*not printed*) when enacted that none shall go out of his country but on the Kings wages."

If this passed as it is printed, what should become of all the tenures? The omission of the printing these is of more advantage to the subject than the King.

Colonel *Titus.*] Thinks the record of no moment, and no reason to spend time on it, now so many things of consequence are upon your hands. There is something of more consideration than either grievances, religion, or property; your safety, to be considered before all things—He takes the Kingdom to be in a dangerous condition, both as to friends, enemies, and allies. Were we ever in such a condition of potency of our enemies abroad? Suppose a man's house in an ill condition, and he calls his friends to advise about the repair of the breaches of it. One finds fault with the wainscot, another that the panes in the windows are broken, the other is for ordering the cushions in the chapel right, but says another, "Your timber is rotten, and the house ready to fall down." And says one, "Your house is beset with thieves and robbers." In the mean time the servants are drinking in a room, and the soberest in the house are falling out about religion. If this be the condition of the house, how many years purchase would you give for it? Would resolve the House into a Grand Committee to consider of the safety of the nation in the condition we are in.

Sir *Nicholas Carew.*] *Titus* has omitted one thing;—servants together by the ears, who should cheat their master most.

Colonel *Titus.*] Moves that aspersions may not be in debates. He is the King's servant, and, if there be any such cheats, begin with him, or where you please else. But his motion, if observed, brings all cheats into consideration.

Sir *Thomas Lee.*] One way to secure the nation is to quiet peoples minds, and that is to keep men at home from service beyond the sea—And would have the state of the navy considered on Saturday. If the stores be full, 'tis very well; if empty, it will be no secret here, our neighbours may take notice of it.

Colonel *Titus.*] Neglect this, whilst your neighbours make

make such preparation, where will you be four months hence?

Sir Edward Dering.] Decay of seamen is not to be remedied; ships may be built in few months, and stores got.

Mr Sec. Coventry.] How hospitals have been managed, and what money has been spent which ought to be to maintain the lame soldiers and widows, is worth your enquiry.

[Resolved, That the farther consideration of the matter upon the translations of the Parliament-Rolls, be adjourned until the Committee have perused and made their report upon the Statute Rolls.]

Debate on the Militia.

Sir Samuel Barnardiston.] Complains of money raised in the county he serves for (Suffolk) by order of the Deputy Lieutenants, for the Militia, and no account given for it.

Sir Thomas Meres.] Supposes that the Law for the Militia provides against this. They that do so may be indicted at the sessions. They are to be at muster fourteen days, at several times; but we are fonder of another sort of soldiers. He would have no more of them at *Black-Heath*.

Sir Thomas Clarges.] There are two defects in that Act. The one "the weeks tax, (which in *Berkshire* they have levied of the year passed) in arrear", and, in another clause, "in Corporations and Cities the levies ought to be as formerly"; which is ambiguous.

Mr Powle.] Reminds you of an army upon the same continent that may invade you at home, meaning the *Scotch* army, (which is "to obey the orders of the Privy Council there.") They may order that army hither. Accounts for his county are duly delivered in at the quarter sessions, and yet money is lost and embezzled, notwithstanding all the care that can be taken. But would not have the consideration of it go to the Committee, as is moved. The Trained bands else may soon degenerate into a standing army. Always, till this Parliament declared it, the Trained bands were kept as a secret how to be im-

ployed. Would have only limited instructions to the Committee.

[A Committee was ordered to inspect the former laws relating to the Militia, and to report the defects, abuses, and grievances to the House.]

Friday, April 23.

The Address concerning the Duke of *Lauderdale* debated.

Mr *Dalmaboy*.] The Duke was not present at that Parliament in *Scotland* that made the Militia Act ; he, in the next Parliament, settles the pay to 6d. a day for a foot soldier, and 18d. for horse. The officers all named by the King. Asserts that it was Lord *Rothes* who was Commissioner when that Act passed, and desires the Acts may be read.

Mr Sec. *Coventry*.] You give your opinions with reasons, which you strengthen by matter of fact. If the King should ask you, Whether the D. of *Lauderdale* was heard, or no, before you made the address to him ? We are in the nature of accusers, and the King the judge. Will you accustom the King to this way of proceeding, to condemn a man without hearing him ? Would hear *Lauderdale* first.

Sir *Nicholas Carew*.] *Coventry* says "we accuse and "the King judges." When we accuse the King may hear him. We are in the nature of a Grand Jury.

Sir *Thomas Lee*.] This is no accusation, but a pure petition, that the King would deliver you from your fears, and you give him your reasons for it—Knows no occasion of hearing the Duke of *Lauderdale* in this business.

Sir *Thomas Meres*.] You deny his removal for these reasons, and those that are for common fame have it. The very words in the address are taken out of the ancient record itself.

Mr *Dalmaboy*.] Gives an account of the manner of passing laws in *Scotland*, to show that *Lauderdale* could not be the sole contriver of this Militia Act.

Sir *Joseph Tredenham*.] If any other persons have done ill, let them be named (*Mallet* making general reflections) The first head of the address is upon what *Lauderdale* should

should say in the Council, witnessed by four of your Members. Different in some circumstances, though they agree in the main—The other relating to matters in *Scotland*. You are told “that ‘tis the custom of Parliament to give the party accused notice of his accusation;” and this you have not done.

Sir Thomas Lee.] Takes him down to Orders. This is against your vote, to hear *Lauderdale* now. It may cause the withdrawing your address.

Sir Joseph Tredenham.] Are you accountable for all the Acts you move for here, and by the concurrence of all parties concerned?—If so, great men are the most unfortunate—All we complain of are Acts made in *Lord Rothes's* time.

Sir Edmund Jennings.] To the Edicts. Remembers, at the last session, this person and others were before you—You heard them, and found them not guilty of promoting Popery—You are speaking as things now stand—It is notoriously known what labour the Council has had to establish religion—Never were greater endeavours, wherein this Duke has been notoriously industrious (*laughed at*) and has had his share therein—Then it may be reasonably asked, how this accusation will be consistent with the present affair? If you accuse him, it must be with retrospection—But for the present state of things, he knows this Duke has been instrumental to suppress Popery.

Mr Garraway.] You are now making an address which you have had no answer of—It may be *Lauderdale* has been a month of the opinion mentioned—Pray God he may be a month longer so!—This justifies what you did the last session—Now you give reasons for what you then did.

Sir Nicholas Carew.] Thinks *Lauderdale* more culpable now, than he was before the Declaration—He found it lately not for his turn and then he's against Popery.—Would have neither the Church of *Rome*, nor the Church of *Scotland*, near the King.

Mr Sawyer.] On this head your address is already voted

ted ; for the matter of it was the first and only ground for your address—A prior reason—But as to the form you may alter it—“ Amongst those who have advised your “ Majesty, we find none more, &c.”

Mr Sucbeverell.] Would have it altered thus “ We “ find just reason to accuse” instead of “ more reason to “ accuse.”

Sir Richard Temple.] Would leave out the general words, and restrain it to the Duke of *Lauderdale* only.

Sir Thomas Lee.] Would have “ the Declaration, in “ terror to your Majesty’s good people.”

The *Scotch* law of the Militia was read.

Sir Lancelot Lake.] The *Scots* engaged against the King formerly by their oaths, and they are, he thinks, *Scotchmen* still, and would not believe them, though they take the oaths in the Act.

Mr Powle.] Now that the two crowns of *England* and *Scotland* are united, here’s an Act whereby they may invade *England*—It may be justly thought that the chief officers in *Scotland* are the promoters of this—And *Lauderdale* is the sole manager there, Principal Secretary—Is the more induced to believe by that clause in the Act, of the power the Privy Council there have upon the soldiers—Especially considering that several of the Privy Council there have been turned out, that opposed this Act—He likes neither an army of *Irish* Papists nor *Scotch* Protestants—And thinks this a good ground of an address for removal of the Duke.

Mr Sawyer.] If there be any thing in the *Scotch* Act for invading *England*, he is against it—But observes that if we assign an ill reason for a thing, though it be so, we teach to deny. Let us consider if there be any thing in these acts that are of terror to *England*; and then, if so, who had a hand in them. The Acts seem to him to be pure Acts of Militia, and no constituting an army to invade *England*, but regulated as your Militias are here, and therefore necessary and legal—But if they differ from our Acts and way of Militia, ’tis no crime—They differ, it seems to him, only thus : Our soldiers, though removed out

out of one county into another, yet they are not to go out of *England*—If your Acts had given liberty for the soldiers to be drawn out of *England*, they had been as these Acts *in terminis*.—At the common law, tenures were bound to go with the King into *Scotland*—The power of contracting for soldiers to go with the King out of *England* is still legal. *Hen. VII.* If the King go beyond sea in person, those who are bound by Patent to attend him, are obliged to go with him, and those powers you have not taken away—These *Scotch* Acts are but a pure licence to carry these soldiers out of the kingdom to repress rebellion and insurrection—'Tis true, there are some clauses which empower the drawing them out “where ‘‘ the King’s honour, &c. shall be concerned”.—But still ’tis true they are but Acts of licence.

Sir *Henry Ford*] Does not remember any unwarrantable Act done by the Duke of *Lauderdale* in procuring this Militia Act. In the late times, in the several accusations against persons, no man was accused for procuring an Act of Parliament—'Tis like an accusation of poisoning the sea—But where is the ill consequence of this Act? —*Titus* told you his mind in a parable—Many men without doors are of his mind—Some are of opinion to build your walls, and it may be higher and bigger than your enemies—But suppose you should think it necessary to form an army, what has *Scotland* to do with that?—You will make *Lauderdale* have more friends than enemies by this address.

Sir *Thomas Meres*.] These words relating to “the “King’s honour” in the *Scotch* Acts, are to be interpreted by the Council of *Scotland*, and they have authority to send these men into *England*, which gives the exception.

Sir *John Talbot*.] There is a third Act which explains the other two *Scotch* Acts of the Militia.—Desires it may be read.

Sir *Thomas Meres*.] This was moved at the Committee,—and then they would have prevented any Act if it had been produced.

Sir *Nicholas Carew*.] This Act that *Talbot* mentions confirms

confirms and relates to the other Acts, and therefore strengthens them.

Sir John Coventry. Our whole business is to remove this person from the King—We are not so much looking into *Scotland*, but to our own safety—He sits counsellor here, and must eight counsellors of *Scotland* have power to send an army hither?—Hopes that neither *Scots* nor *Irish* Papists shall be sent hither—And moves for the address to be voted for his removal.

Which was voted accordingly, and is as follows.

“ We your Majesty’s most dutiful and loyal subjects, the Commons in this present Parliament assembled, do, with humble thankfulness, acknowledge your Majesty’s care for the safety of your people, in calling us together at this time to consult of the best means for the preservation of our religion and properties; and tho’ we have great cause to rest assured of the continuance of your Majesty’s gracious disposition towards us, yet we find, upon a serious examination of the state of this kingdom, that there are great jealousies risen from some late proceedings, in the hearts of your subjects, that some persons, in great employment under your Majesty, have semented designs contrary to the interest both of your Majesty and your people, intending to deprive us of our ancient rights and liberties, that thereby they might the more easily introduce the Popish religion, and an arbitrary form of government over us, to the ruin and destruction of the whole Kingdom.”

“ Amongst those who are at present employed under your Majesty, we have just reason to accuse, for a promoter of such designs, the Duke of *Lauderdale*, lately created Earl of *Guilford*; because we have had it testified in our House, by several of our Members, that in the hearing before the Council, of the case of Mr *Penystone Whalley*, who had committed Mr *John James*, contrary to your Majesty’s Declaration of the 15th of *March*, 1671, he, the said Duke of *Lauderdale*, did openly affirm, in the presence of your Majesty sitting in Council, and before divers of your subjects then attending there, “ That your Majesty’s edicts ought to be obeyed, for your Majesty’s edicts are equal with laws, and ought to be observed in the first place”, thereby, as much as in him lay, justifying the said Declaration, and the proceedings thereupon, and declaring his inclination to arbitrary counsels in terror of your good people.”

“ And we are farther confirmed in this opinion by two late Acts of Parliament, of a very strange and dangerous nature, which we have observed amongst the printed Statutes of the Kingdom of *Scotland*;

Scotland; the first whereof was in the third Session of the first Parliament, held there under your Majesty, Chap. 25. And the other in your Majesty's second Parliament, Chap. 2. The like whereof have never passed since the union of the crowns, and are directly contrary to the intention of an Act passed here in the fourth year of the reign of King James, for the better abolition of all memory of hostility, and the dependences between *England* and *Scotland*, and for the repressing of occasions of discords and disorders in time to come; and of a like Act, passed about the same time in the Kingdom of *Scotland*, by force of which said late Acts there is a Militia settled in that Kingdom of 20,000 foot, and 2000 horse, who are obliged to be in readiness to march into any part of this Kingdom for any service "wherein your "Majesty's honour, authority, and greatness, may be concerned, "and are to obey such orders and directions as they shall from "time to time receive from the Privy Council there." By colour of which general words we conceive this realm may be liable to be invaded, under any pretence whatsoever. And this hath been done, as we apprehend, principally by the procurement of the said Duke of *Lauderdale*, he having, all the time of those transactions, been principal Secretary of the said Kingdom, and chiefly entrusted with the administration of affairs of State there; and himself Commissioner for holding the Parliament at the time of passing the latter of the said Acts, whereby the providing of the said horse and foot is effectually imposed upon the said Kingdom, and this extraordinary power vested in the Privy Council there: And we conceive we have just reason to apprehend the ill consequences of so great and unusual a power, especially while the affairs of that Kingdom are managed by the said Duke, who hath manifested himself a person of such pernicious principles."

"We do therefore, in all humility, implore your sacred Majesty, considering how universal a fame and clamour of the said misdemeanours runneth openly through all your realm, That for the ease of the hearts of your people, who are possessed with extreme grief and sorrow to see your Majesty thus abused, and the Kingdom endangered, that your Majesty would graciously be pleased to remove the said Duke of *Lauderdale* from all his employments, and from your Majesty's presence and councils for ever; as being a person obnoxious and dangerous to the Government."

Lord Cavendish.] Informed the House of one *Hamilton* who held a Thesis at *Leyden*, of a strange nature, against the present government, *De Ærario publicæ necessitatis*, for which the Duke of *Lauderdale* procured him to be knighted, and he was presented with 500*l.* for it; and had

an office given him of Secretary of the inspections in *Ireland*—Would have Dr. *Burnet* called in, who is at the door, and interrogated about it.

Sir *Nicholas Carew*.] An arbitrary Duke may cause Dr *Burnet* to be hanged, drawn, and quartered, when we are up, for informing us—Therefore as we may punish Dr *Burnet*, if he refuses to speak his knowledge of what we shall ask him, so desires the house may protect him, if he rightly informs them.

Mr *Vaughan*.] Dr. *Burnet* comes under as high an obligation before us, next an oath, that can be—You cannot indeed extort a question from him, but you may punish him for refusing to answer what you shall interrogate him.

Sir *Nicholas Carew*.] Would have him told the power you have.

Sir *Thomas Lee*.] Moves that you mention the words that fell from him at the Committee who drew the address, for removal of the Duke of *Lauderdale*, which are the occasion of his being sent for hither.

Dr *Burnet* was brought to the Bar.

Then the Speaker admonished him, That he was sent for to speak his knowledge to what he should be interrogated. He then was asked about the words which fell from him at the Committee, and told the power the House had to punish him, if he refused to answer, or prevaricated.

Dr *Burnet* then said “That when he was sent for to the Committee he told them, “what others knew as well as himself he would declare, but humbly begged pardon if he did not inform the Committee what passed in private discourse betwixt himself and the Duke; there having been some difference between him and the Duke, it might be thought done in revenge”—Would willingly prevent ill things—but, with all humbleness in the world, begs pardon of the House for his silence, and submits it to the sense of the House.”

Then the Speaker asked his knowledge about Sir Robert Hamilton's Thesis at Leyden, De Ærario publicæ necessitatis.

Burnet said, “He had not read it till within these eight “days.” And withdrew. Sir

Sir *Nicholas Carew.*] You have heard *Burnet's* answer, and desires the opinion of the House to his declaring the discourse betwixt him and the Duke of *Lauderdale*—He believes it to be something of a high nature—Would call him in to declare what he knows, which, if he refuses, would send him to the Tower.

Sir *John Hanmer.*] It is an ill precedent for a man to be put upon declaring private discourse—Would not have him sent for in.

Sir *William Hickman.*] This is not a private matter—It concerns the Public, and would have him sent for in.

Mr *Sacheverell.*] Fears that *Burnet* comes a fishing to know whether you will have any from him. If the matter he knows be dangerous, he ought to reveal it; if not, he is in no danger, and of which you are to judge.

Mr *Vaughan.*] The common safety is the cause. Counsellors reveal their secrets in their closets, not in the streets. “That it is not for *Burnet's* honour to say what he “knows” is no argument, when he seemed to insinuate something more he had to say—For the danger of the discourse betwixt him and the Duke he is no judge of.

Dr *Burnet* then was again called in.

And the Speaker told him, “That the House was not at all satisfied with his answer, but believes he knows something important that fell from this Lord, which, if he concealed, he must expect to be proceeded against accordingly.”

Dr *Burnet* then said, “He shall always pay obedience to the authority of this House, as becomes him. He never heard the Duke of *Lauderdale* say “That he intended “to bring the *Scotch* army into *England*,” but the Duke once asked him, “Whether he thought *Scotland* “would assist the King, if he needed them, about suppor-“ting the Declaration?” To which he indefinitely answered, “He thought they would not.” The Duke replied, “He thought they would, and that they would bring a “great many with them.” This discourse passed betwixt them

them the first Saturday in September, 1673, in the Duke's dressing room, at the Gatehouse, in Whitehall. He withdrew.

Sir Thomas Littleton.] Burnet tells us, this was the substance of his discourse with the Duke; but would have him called in to inform them the circumstances likewise, which will much enlighten the thing.

Mr Vaughan.] Would know whether he came casually to the Duke, or was sent for by him.

Colonel Strangways.] Would have him asked what Declaration he means?

Sir Eliab Harvey.] Would have him asked, what he does know as to other matters?

Mr Garroway.] About that time he came over out of Scotland, you were about the Declaration—if you have a mind to the thread of all the counsellors that advised this Declaration, possibly he may give you some light—Would know of him whether he was sent for, or whether this was an accidental discourse.

Sir Rob. Howard.] Would have repeated to him what he has already said, that he may explain himself farther.

The Clerk, who was ordered to form what Dr Burnet had given an account of at the Bar, did read it to him, which Burnet did avow, and is as follows :

“ That coming into England, out of Scotland, the first Saturday in September 1673, he went to visit the Duke of Lauderdale, at his lodgings over the Gatehouse in Whitehall, where the Duke and he discoursed of the affairs of this nation, and of Scotland, and particularly concerning the proceedings of Parliament touching the Declaration for suspending penal laws, in matters ecclesiastical, and being afterwards asked, “ Whether if Scotland being called in “ to assist the King in supporting the said declaration, they would “ assist him or not? ” he answered “ He thought they would not. ” But the Duke replied, “ He believed that they would, and that “ their coming into England would bring a great many. ”

“ That the Duke asking him of the affairs of Scotland, he answered, “ The people of Scotland, that were at such a distance, “ could not imagine what to think of the King’s Speech, and what “ was afterwards done concerning the Declaration. ” Whereto
the

the Duke replied "They have all forsaken the King except myself and Lord Clifford*."

[The Debate was adjourned to Thursday.]

* The Bishop's own account of this affair is as follows: "The House of Commons fell upon Duke Lauderdale, and those who knew what had passed between him and me, moved that I should be examined before a Committee. I was brought before them. I told them how I had been commanded out of town. But tho' that was illegal, yet since it had been let fall, it was not insisted on. I was next examined concerning his design of arming the Irish Papists. I said, "I, as well as others, had heard him say, *He wifbed the Presbyterians in Scotland would rebell, that he might bring over the Irish Papists to cut their throats.*" I was next examined concerning the design of bringing a Scottish army into England. I desired to be excused as to what had passed in private discourse, to which I thought I was not bound to answer, unless it were high treason. They pressed me long; and I would give them no other answer; so they all concluded that I knew great matters; and reported this specially to the House. Upon that I was sent for, and brought before the House. I stood upon it as I had done at the Committee, "That I was not bound to answer; that nothing had passed that was high treason; and, as to all other things, I did not think myself bound to discover them." I said farther, "I knew Duke Lauderdale was apt to say things in a heat, which he did not intend to do; and since he had used myself so ill, I thought myself the more obliged not to say any thing that looked like revenge for what I had met with from him." I was brought four times to the bar. At last I was told, "the House thought they had a right to examine into every thing that concerned the safety of the nation, as well as into matters of treason: And they looked on me as bound

"to satisfy them. Otherwise they would make me feel the weight of their heavy displeasure, as one who concealed what they thought was necessary to be known." Upon this I yielded, and gave an account of the discourse formerly mentioned, (a.) They laid great weight on this, and renewed their address against Duke Lauderdale. *Hist. of his own time.* Vol. I. p. 379-80,

(a) P. 355. where it is thus related, "At my coming to court, Duke Lauderdale took me into his closet, and asked me the state of Scotland. I upon that gave him a very punctual and true account of it. He seemed to think that I aggravated matters, and asked me, "If the King should need an army from Scotland to tame those in England, whether that might be depended on?" I told him, "Certainly not." The Commons in the southern parts were all Presbyterians, and the Nobility thought they had been ill used and were generally discontented, and only waited for an occasion to show it." He said "He was of another mind: The hope of the spoil of England would fetch them all in." I answered, "The King was ruined if ever he trusted to that." And I added, "That with relation to other more indifferent persons, who might be otherwise ready enough to push their fortunes without any anxious enquiries into the grounds they went on, yet even these would not trust the King, since he had so lately said, he would stick to his Declaration, and yet had so soon after given it up." He said "Hinc ill lacrymae: But the King was forsaken in that matter for none stuck to him but Lord Clifford and himself." And then he set himself into a fit of railing at Lord Shaftesbury.

Saturday, April 24.

Mr *Pepys*, [according to order] gave an account of the present state of the navy, and the stores thereto belonging, and delivered the several particulars thereof in writing in at the Clerk's table.]

[Debate.]

Mr Secretary *Coventry*.] Would have no copies of this account go abroad, but would have it lie upon the table.

Mr *Sacheverell*.] Is glad to see we are so near our neighbours, in the number and strength of our navy. We are it seems but four ships difference from *France*, therefore is not afraid to have this account of the navy entered into the journal—And would have time to see whether these accounts are as they are given in, and if so small a sum as *Pepys* has mentioned will set the fleet out; if so we have no need of giving any thing now.

Mr *Garroway*.] There are lists of the navy abroad in the nation as exact as this given in by *Pepys*; these things are known all *Europe* over, as well as in this House—It needs not this ceremony of concealing, if the navy be in so good repair as is represented—Would have thanks given to the King for it; but would have no private committees for further inspection in the business.

Sir *Thomas Clarges*.] Would take this occasion to enquire into the whole revenue, how things are spent; possibly the committee may think fit to send to *Chatham*, to view the ships and stores. In *July 1668*, the King sat in Council to consider his revenue and the whole charge upon it was 7 or 800,000*l.* In that, 300,000*l.* were dormant privy seals, but now the whole revenue goes in privy seals. If there has been any male-versation or practice in these things, he desires that the committee may consider of it.

Colonel *Titus*.] Doubts not but *Clarges* has made a good motion, but 'tis not the thing in question—It being whether the accounts should be exposed to view, or referred to a committee. A General that took a spy, has purposedly

posely showed him his army and strength—But you would not have Ambassadors know all the privacies of the nation. You are sure that such as you name of the committee will not keep any thing they shall find out from the knowledge of the house—Would commit it.

Colonel *Strangways.*] Would have things done in a parliamentary way ; every man here has an equal right to attend a committee, though not to vote at it, unless named of the committee—Would have no more long parliament-committees, to impose upon the house.

Sir *Charles Harbord.*] In the year 1601 the *French* had but three ships of war ; they were afraid of Queen *Bess*, and durst build no more—The *French* increasing at this rate in shipping, as you are told, 'tis high time to lay your hands upon your hearts and purses.

Sir *Thomas Meres.*] Would lay his hand upon his purse as *Harbord* does, to keep his money in it*—He is against a close committee to inspect this business of the navy—He has met with a paper abroad, almost as exact as this of *Pepys*—Would adjourn this debate till *Monday*, to have time to consider of it, and then you may impose it upon the honour of the committee not to divulge their enquiry.

Mr *Powle.*] By reports abroad fears the navy in a more dismal condition than it appears to be by the relation given, which may be very well supplied by the King's revenue ; if 144,000*l.* will do, the King might have built ships of his own, upon the stocks, therefore moves for *Tuesday* next for the farther consideration, &c.

Sir *Thomas Littleton.*] Moves to state the revenue, and, if thought fit, that an account be brought as a ground work against *Tuesday*, seeing the defects of the navy so small, and the revenue fit to do it, he thinks there is no need of farther help.

Sir *John Ernly†.*] The “keeping” the fleet out, as well as “setting” it out will require some hundreds of thousands of pounds—'Tis better husbandry to keep some

* This repartee, *Burnet* says, was *bord's* own son. See *Hist. of his own times*, p. 386.
made in the next session and is ascribed by him to Sir *Charles Har-*

† A commissioner of the navy.

ships in, and build new ones—'Tis worth your consideration to have some on the stocks,

Mr Secretary *Coventry*.] Are you sure that if we have war, there will be but one battle? If you have not a good fleet, you had as good have no fleet—Moves that the building of ships may be thought of, out of the real consideration how the nation may be defended—If you will have a fleet, examine the calculation that is given in, and see how you can defend the kingdom with so few.

Sir *John Hotspur*.] Would have some of the revenue appropriated to the use of the navy. When you examine the revenue, you may see money gone out for forces, not the trained bands, but forces that you have condemned here—Moves to consider the state of the revenue against *Tuesday*, and to take off what is not public, or safe, out of the charge of the revenue, and to employ it to the use of the navy.

Sir *Nicholas Carew*.] Though you are told but of a small sum to set out the navy, yet there must go a great deal to maintain it—But as the charge of the navy increases so does the revenue—Tonnage and poundage were given for the use of the fleet only—Moves “that no part of the customs be surcharged, but to remain free for the use of the navy.”

Sir *John Coventry*.] Perhaps we shall also make enquiry who has destroyed the navy—Enquiring into the customs is told that the Duke of *Lauderdale* has 3000*l.* *per ann.* out of the customs—Wonders not, if such pensions be granted, at the defects of the navy.

Mr *Eacheverell*.] Seconds *Coventry*'s motion—'Tis seasonably moved to have the state of the revenue before you, and how it is laid out—if we do it not now, we shall never do it—Moneys that are brought into the Exchequer are conveyed out into private hands, and private treasuries. The revenue is now so great, the nation is able to bear no more charge—The excise and customs are to the King worth 1,300,000*l.* and cost the people 1,500,000*l.* *per ann.* together with the first fruits and chimney money—He lays the balance upon what we know—if a fifth part of all

all the revenue be not able to maintain the fleet, 'tis a dismal prospect—Tonnage and poundage were never intended to be given away, but for the ships, and to raise a bank against necessity—And would see whether the course of the Exchequer be not so diverted as never to come to an account.

Sir Thomas Littleton.] The appropriating the customs must be by Act—And in the mean time the customs are all run away with by anticipations—Would not have that rod hang over us—We may possibly be prorogued as we were formerly, and in *October* no ships built—Moves “that the farther anticipation of the customs for *England* and *Ireland* may be voted a disservice to the King, and kingdom.”—By way of forming a law—Otherwise we shall do a great disservice to the King and kingdom.

Sir Thomas Clarges.] Would have the thing come in method of Parliament, because as yet we know not certainly what these anticipations are—We suppose them only, and he would have the enquiry for your better information referred to a committe.

Lord Cavendish.] This vote has no retrospect for what is past, but to provide for the future, for the safety of your sons.

Mr Secretary Coventry.] The kingdom may be lost for want of anticipitations upon the King's revenue—He knows no government but does it—And should it be voted, you take off many mens security for money they have lent the King.

Mr Secretary Williamson.] He thinks the motion goes on too fast—This of the customs is the great branch of the King's revenue, and is now under the charge of the King's house, and necessary expence, and thinks that as necessary a part as any—Till you give the King money, pray take not away his credit—We have had war with *Tripoly*, now 15 days since—That war cannot be supplied, but by credit—Therefore would not go too fast in this motion.

Sir Tho. Littleton.] This motion ties not up the King's hands, but for a few days—The question is, whether we

are to be trusted—We shall never tie up the King's hands for useful anticipations, till farther care be taken.

Mr Boscawen.] The stopping these anticipations will be no great matter in point of the King's credit—Would have the customs diverted from those payments that are of no use, and a proportion applied to the navy—And anticipations taken off, till further provided for.

Sir Charles Wheeler.] He was alive in 1641, and in the height of the discontents and grievances then in that Parliament, things [were] not altered till dispatched in Parliament—if our vote be for stopping anticipations, but for ten days, it seems to be a binding up the King.

Sir Thomas Meres.] Tho' we be prorogued, and prorogued, and protogued again, we must speak plain English—Tis plain there has been a neglect of building ships, and that we are behind our neighbours—Would now so prepare the thing that this vote may keep us from a prorogation—if we stop it not now, we are going just on again to anticipitate the revenue as formerly—We offer at no branch of revenue, but the customs—The advances that are upon them may be for the building of ships, and is but what it ought to be—if men have not hearts to come up to this, the kingdom will sink.

The Speaker, Proffering, as Treasurer of the navy, to speak to the point,

Sir Thomas Meres.] Told him, That by the orders of the House he ought not to speak, before he had first asked leave to do so.

Sir William Lewis.] Regularly the Speaker ought to be heard, when he proffers to speak, but if he speaks not to orders, another member must be heard that speaks to orders.

Sir John Coventry.] What inconvenience do we now lie under, when we have a Speaker that breaks our orders?

Sir William Lewis.] If the Speaker offers to clear any thing in doubt, you must hear him.

Sir Thomas Littleton.] Though the Speaker may deliver himself, under the notion of stating matters of fact, it must be done “with leave”; he may speak in other mat-

matters, of order, and collecting the sense of the House, but not else.

The Speaker.] Has the honour of serving the King as Treasurer of the navy, and derives it from the honour he has of sitting in your chair, as your servant—In the time he has been Treasurer of the navy, he has received 1,400,000*l.* and is ready to give an account of it to a farthing.

Sir John Coventry.] Is not unwilling to hear the Speaker, but not without leave of the House.

Mr Sacheverell.] Would be informed whether this money has been out of the customs, or the other revenue.

Sir Robert Howard.] Take the condition of the navy to be in a war, when there was not one shilling towards it—Has seen this house always take precedents from what is clearly before them—Would have all windows open as to this business—As on the one side he will not dispute the jealousies, and fears of any man—This vote will not further prorogation, being no act—Believes the *French* will never forget our taking leave so suddenly of them, when we made peace with the *Dutch*, nor the *Dutch*, the surprise of the *Smyrna* fleet—This is our condition—Perhaps our jealousies are reasonable enough—New forms being taken—You may have your ends in this vote, and yet pay your respects to the King and nation—Would have it instead of a vote, an address to the King and have it voted, “That whoever advises the King to it, is an enemy to the King and you;” and then you hold forth that terror you would hold forth.

Sir William Coventry.] As to Howard's notion of “the *French* and *Dutch* remembering us,” he hopes and believes they will not resent it both together, and would willingly keep them divided—He has the same wishes as other gentlemen have for fitting here and doing something for the nation, and would not so bind the King as to occasion a prorogation—The inconveniences objected, are arguments to him for the vote—There cannot be such a necessity of such vast anticipations upon the customs, but that the Parliament may be called to

Supply them—That all the customs should be anticipated, is the most destructive thing to the nation in the world—He hoped that the stop of payment in the Exchequer might have prevented these anticipations, but sees it has not. An address to the King for taking them away may do well; but hopes that preventing the anticipation but of one half of the customs, may remedy the thing, and would change the vote into an address to the King, “ That no farther anticipations may be made ‘till money be provided for the navy.”

Mr Powle.] As to the account the Speaker has given you, he wonders that a greater sum has not been laid out for the navy. There was in the Treasury, when this Lord Treasurer came into office, 60,000*l.* of the prize money—The Dutch money, and advance above 150,000*l.*—Great advances by extraordinary ways, and yet not for the fleet. He wonders at the advance! ’Tis most necessary for us to prevent anticipations; should all the revenue be anticipated [it would be] the most dangerous thing imaginable upon any emergency.

Mr Sacheverell.] Is against this address to the King, for you to supplicate for what is your right already, unless you will found your address upon the Act of Parliament which appropriates the customs to the use of the navy—if the address be so, he is for it.

Mr Garroway.] Would have it in the address particularised what Act you mean—for one Act appropriates to the payment of debts, and therefore would be clear in the matter.

Resolved, That an address be presented to the King to prevent any farther anticipation [or charge] upon his Majesty’s customs of *England* and *Ireland*, [it being a disservice to the King and Kingdom.]

Monday, April 26.

The Bill against transportation of persons beyond the seas, for offences, &c. and illegal imprisonment; and that of levying money without Act of Parliament, were committed.

Mr Russel.] Was glad to hear, on Saturday last, an account that the navy was in so good a condition—But thinks

thinks all we give is too little when the Treasury is managed to set up private men and their heirs. The Earl of *Danby* has acted in it in a high and arbitrary manner, and disposed of the treasure as he pleased—And has publickly declared at the Treasury “that a new proclamation is as good as an old law,”—Moves “that he may be removed from the King and his employments,” and that an impeachment be drawn against him.

Sir *Samuel Barnardiston.*] Has no malice against this Lord, but if the King be well served, he cares not by whom. He has articles to present the House against him for his ill management of the treasury, and his arbitrary proceedings in it.

The Speaker.] The nature of the articles must be first opened, before delivered by the orders of the House.

Sir *Samuel Barnardiston, opens them.*] They contain many miscarriages in the management of the Treasury. And that he should there say, “that a new proclamation is better than an old law,”—Causing a perfon to be banished that prosecuted, &c.—And his arbitrary proceedings in the marriage of his second son to Mrs *Hyde*.

Mr *Powle.*] Always had, and still has, an unwillingness to accuse great men, it looking like faction; they being more exposed in their actions than other men, are thereby more liable to exception—What he does is out of discharge of his duty here—Is not for removing of one man to mend the prospect of another—All things are managed in the Exchequer by him by colourable and fictitious practices—The Exchequer constitutions are very excellent—All things managed there must be by persons sworn, and are equally liable to the King’s debts, as if persons that acknowledged a statute staple—The checks and controuls there are perpetual evidence of what is done, no money being paid or received, but a record is kept of it—But this Lord Treasurer has removed the money into other hands, that thereby no record may be kept of it—By this means the money is got into private hands, without record for it in the Exchequer—By this means, no enquiry, either for the King or the subject, can be

be made, what becomes of the money. Formerly the trade crept in by small sums, which made way for greater—But now by whole sums, tallies by anticipation entered; but he has gone farther—Such a patent he has obtained for his office as no age yet ever saw, and hopes no future age ever will see. There is a patent granted for the customs, but he passes it to another to keep it in his hands, till his order for disposing of it, the better to invest himself in them. The patent for the excise makes the account to be passed in the Exchequer, or else-where. In the preamble of that patent 'tis said to be done by the advice of the Chancellor of the Exchequer [Sir John Duncombe,] (who at present is not here) but doubts not he will truly acquaint you whether by his advice. The taking these two great branches of the revenue, is like a Steward who takes all the domains into his own hands, and leaves the Lord of the Manor a few tenements—By this way of farming, he takes all he can into his hands, and disposes of it how he pleases. Here have been extraordinary advances upon these farms, besides the ordinary revenue spent—But is the fleet repaired, or debts paid, or stores laid in? All this spent without applying any thing to that use—The patents are on record, and may be seen by any body—The punishment of one great officer of state, in such cases as these, is better than any laws you can make—First, let us settle the King at home, and then let us look abroad—And he will undertake the proof of these articles himself rather than they shall go without.

Mr Garroway.] Sees the charge against the Lord Treasurer wherein he is concerned in several things, *viz.* “The precharging the revenue of the customs with sums of money,” but he that sees what is transmitted to the Exchequer from thence, will not find that Article against the Lord Treasurer so considerable—Except some pensions, does not know any thing charged on the Exchequer account, *viz.* Prince *Rupert's* pension, the Bed-chamber men's, and the allowance to the commissioners of the customs. On his cognizance, knows no more

more—But whether the House will take cognizance of proceedings in the Exchequer, where the Lord Treasurer of *England* is so trusted, and when he has consulted with the King's Counsel in the drawing his patent—Will you let no man sit easily in his employments? When you consider his power, he has a vast one by law—And he would see the patents, before you make his actions crimes—When you come to see whether this patent was surreptitiously gotten, and whether Sir *John Duncombe* knows of this patent, then you will be better informed to give your judgments. For that charge of the Lord Treasurer's saying, “A new proclamation is better than an old law”, remembers the charge against Lord Chief Justice *Keeling* about *Magna Charta**. If interlocutory discourses may be wrested, there is an end of all conversation. For the charge about “banishing the man mentioned,” he knows the Lord Treasurer's tenderness so much in his actions, that when the commissioners of the customs but turned out a man that had an office in the customs, for misdemeanour, they were to justify it before the Lord Treasurer. For the charge “of the marriage of his second son to Mrs *Hyde*,” he has heard discourses, but knows nothing of it. If there be any thing in it, 'tis cognizable at law, and why should we take up the cudgels for another man, without that man's petitioning us about it? If he can have no redress at law, let him come hither—Would have the patents seen here, before you proceed any farther.

Sir *Richard Temple*,] In all cases, he has observed the Treasurer to take the best advice he could, and has made the law his rule in all things within his observation. The customs were never so little charged as in this Lord Treasurer's time. For the other charges against him, which are not public, we do not the nation service in charging these little things, which have more sound than substance—Would appoint another day for viewing the patent, and farther examination of the matter.

Sir *Nicholas Carew*.] Agrees not with *Temple's* moti-

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* See Vol. I. p. 62.

on for "another day," he would not have any criminal made innocent here, nor innocent, criminal—Would have the articles read, one by one, and so receive them or reject them, as they shall be made out.

Sir John Coventry.] Has an honour for this great Lord, but has it for no man that would alter the Government—The articles are new to him, but doubts not but in due time they will be made good, and that some Members will make them every one good. If you find matter in them, punish him, if not, clear him.

Lord Cavendish.] Hears few say that the articles are not a ground of impeachment against this Lord—It may be the first article is doubtful in law.

Mr Vaughan.] At the first sight, these articles are of a high nature—He thinks the persons that have undertaken them, have a hard part to manage, and it has been ill fortune to accuse men in this House, since to accuse is to strengthen court parties—For the articles read, men must give their opinions of them with their judgments, and must come with all their judgments—He would not hastily find a man guilty.

Mr King.] Would take time to consider of these articles, and not proceed hastily upon them—He has known great good the Lord Treasurer has done—He has paid off the navy and army—These articles are high, and should be well considered of.

Earl of Ogle.] Moves to put off the Debate for two or three days—Is sure that no such thing as is alleged the Lord Treasurer should say about the proclamation, was ever said in the Council.

Sir Thomas Meres.] Here are articles brought you, and men undertake to prove them. This was thought sufficient to impeach in Lord Clarendon's case—But now people are disproving them before they are proved—At this rate, every man will be acquitted that shall be accused—Joins with Vaughan's motion, "That whoever is next bring the articles as these are,"—and he'll go to the Lords bar with them—Putting the thing off to another day, is but a bye way to lose time, to destroy

it---Let the patents be brought hither to morrow---This is not the Duke of *Lauderdale's*, nor the Duke of *Buckingham's* case---But to have enough to induce you to impeach this Lord at the Lords bar.

This went off without a question.

Sir *Courtney Poole.*] Speaks to the method of proceeding---This is a great crime, and a great man---Supposes that those gentlemen that brought them in, know how to prove them, and are prepared to do it; and that others that are not, may have time to consider of them---Moves it.

Mr *Powle.*] He has no intention to engage you in a hasty vote---But he thought these alleged, great crimes ---Would have a day appointed to consider---And the patents brought, and let the officers of the Exchequer compare them with former grants---If they be found legal, shall comply as much as any man.

Mr Secretary *Coventry.*] Many things must go to the making a man so criminal as fit for notice in this House; they ought to be great. Sometimes a minister of state, in favour, carries things higher than other men have done in their place---Would not have the House engaged in that which they may not go fairly off from---No man can be against the thing going on fairly; and moves for Wednesday.

Sir *Thomas Lee.*] There must be divers questions before you come to impeachment. He would do nothing to draw an ill precedent upon this House, for any man's sake. All agree that the impeachment when passed, must be carried to the Lords Bar, and you are at your liberty for your method of proceeding---Members undertake the proof of the articles, and will not you accept them? Then comes the whole question, Whether upon the proofs you have matter to proceed to impeachment? This way you must go, and have always done, unless you will lose all method of proceeding---The man is equal to him, in all respects.

Sir *Charles Harbord.*] If there be no such thing as these articles, you give a wrong judgment---He has had the

the honour to serve the King under seven or eight Lord Treasurers, and by the duty of his place he is to advise with all things relating to the revenue---He has endeavoured all his time to save the Treasury, but sees he cannot do it---So far as he has been acquainted with the Lord Treasurer he has not found his understanding defective in it; and has wondered at it, that a young man, and a country gentleman, should understand it so soon. In this business would go as faithfully and as truly as any man---As he has charity for the gentleman that brought in these articles, so he knows many of these things to be otherwise---Would have you view the state of the revenue first, and, if proper, then would enter into the merits of the cause---He can disprove many of these things alleged.

Mr *Garroway.*] He thinks it for the interest of the Treasurer that you should proceed in the articles---But would waive that article "of the Treasury", till the patents are viewed, and would have that done to morrow.

Mr Secretary *Williamson*] You cannot do a greater right to the Treasurer and your own justice than to proceed---He cannot give his judgment that any of the articles are criminal, though proved---The proceedings of the Treasury must be compared with former times---You are not ripe for the thing now---Therefore moves for Friday.

Sir *Charles Wheeler.*] Doubts not but as common fame leads this matter, it will be considered on the right hand as well as on the left---He believes the Treasury will appear as well to morrow as the navy did the other day---Would lose no time---He hears it said "that things come to be disproved before they are proved;" when one side says, "money is paid", the other "not paid", no wonder---He believes there is not one penny paid out of the Exchequer, but by order---If commissions have ran, legally and fairly, higher than formerly, if one Lord Treasurer by commission has more power given him by his patent than ordinary, 'tis not illegal.

Sir

Sir *Edmund Jennings.*] Would have no time lost, and is confident that if the noble Lord concerned was here present, he would be of that mind---Would postpone that first article, and proceed to the rest, and doubts not but the Lord, upon examination of the whole matter, will rather deserve the thanks of the House for his good management of the Treasury, than their accusation.

Col. *Titus.*] If the Treasurer has offended, it must be in the male-administration of his place in the revenue, and untill you inspect that, would defer the consideration of the articles.

Col. *Bircb.*] If any thing had been done amiss in the excise, would have been so faithful a servant to the Treasurer as to have told him of it before he told the House---That the Treasury is gone is certain, but as to the Treasurer's being in fault, hopes he will come out purified like gold---If the Treasurer was here present, believes he would not have this busines go over---Remembers that in Lord *Clarendon's* case, before he gave his consent to impeach him. he would have the articles proved; and if they are not so now, he will be of the same mind he was of then---Would have them read, head by head, and would have some light into them presently.

Mr *Sacheverell.*] Moves, as to the method of your proceeding---You must first judge whether these articles are criminal, abstractedly proved, and, though so judged, you must consider, whether [they are] such as you will proceed upon.

Sir *Robert Howard.*] You must consider whether the thing done be that, or no, and those, crimes, or no---Then your time is to give judgment, whether the things done are these crimes, or no.

Mr Attorney *Montagu.*] Strange that he should be so conversant in the Exchequer, and [yet] know not the least of this charge---For the patents, they must be seen, and for the charge of the proclamation, &c. no man walks by rule of law in his place more than this Lord Treasurer---Would have some short time appointed for the proof of the articles.

Col.

Col. Strangways, speaking after Sir Thomas Littleton, seemed to cast some reflective expressions upon him, viz.—Some men are of one mind when in office, and another when out of office ; which Littleton taking exception at,

Mr Secretary Coventry said,] Strangway's reflection was not upon any particular Member, but he spoke it generally---If the words had immediately reflected, they must have been written down.

The Speaker.] The House is no more bound by one order than another ; you are masters of it as in Bills to be read by order, and the question put, and the day sometimes altered.

Mr Sacheverell.] This is not a single order, but order of Parliament---You may as well order that a Bill shall be read but once.

Mr Secretary Coventry.] In Mr Harwood's case, who spoke against what he said, — In that case a man had spoken before the words were set down, and the matter debated, so that the words then could not be set down.

Sir Thomas Lee] If a Debate arises, what were the words interfering, you are passed writing down the words --- If the Speaker will declare it so, he is well satisfied.

Sir Robert Howard.] Takes occasion to move that this Debate may be laid down and sleep, being a way to introduce a question upon a standing order---The most dangerous thing imaginable!

The Speaker.] Moved it to be made a standing order.

Sir Thomas Lee.] Would not have that now voted to be a standing order, that is one already.

Mr Vaughan.] If once we debate reading of bills a third time, we shall make strange work---By the standing order, words are to be agreed upon before any Debate of them be ; and wishes this Debate may slide over.

Sir Thomas Littleton.] Has not troubled you with any thing of his own concern, though he has had reason for it, as in razing records by a warrant from the King---After all his services, did little expect he should have

have been expos'd---Them that wrested this from the King, he prays God to forgive---He came to his office of victualler of the navy, in a time when he thought he might have served the King---Just at the time of entering into the Triple Alliance---When no invasion of property or religion; but when the *French* court changed us, that matter changed too---But, he observes, that men are gone from him, more than he from them. No man runs more hazard for the service of his country in that office, than he does, even to his ruin.

Tuesday, April 27.

An ingrossed Bill from the Lords, for [the better] tryal of Peers, importing thirty Peers at least to be summoned, &c. was read the first time.

[It was ordered to be read a second time in a full House.]

The Articles against the Lord Treasurer were this day delivered, more fully drawn up, by Sir *Samuel Barnardiston*, and were as follows*:

I. That *Thomas, E. of Danby*, Lord High Treasurer of *England*, hath violated the method of the Exchequer, exposing thereby the revenue, and ingrossing all the power into his own hands: That the said Lord Treasurer † hath overthrown and violated the ancient course and constitution of the Exchequer, by perverting the method of receipts, payments, and accounts, contrary to law; whereby the King's revenue is put into confusion, and a wasteful way of expence, to the destruction of his [Majesty's] credit, and expos'g his Majesty's treasure and revenue to private bargains, and corruptions; and hath ingrossed into his own hands the sole power of disposing almost all the King's revenue, laying aside the Chancellor [and Under-Treasurer] of the Exchequer, and other officers; whereby the usual and safe government of his Majesty's affairs relating to his revenue, and all checks and controuls are avoided.

II. That a suit at law being intended about the marriage of the daughter of Sir *Thomas Hyde*, the said Earl caused one Mr *Brandly*, a principal witness in the said cause, to be arrested by an extraordinary warrant from one of the Secretaries of State; and to be kept for some time inclose custody; during which time, some of the said Earl's agents did labour the said Mr *Brandly* by threatenings and promises of reward, not to declare the truth; and at midnight he was brought and examined before his Majesty,

* They are inserted in the Journal of April 26.

† These words in Italicks are not in the Journal.

upon oath ; where the said Earl was present and assisting. Whereupon the said Mr *Brandly* did, by the means aforesaid, deliver in a testimony contrary to his own knowledge, and against his conscience, he being then in dures ; by which illegal practices his Majesty was highly abused, the parties concerned in the said law-suit greatly prejudiced, and the truth suppressed, to the manifest obstruction of justice ; and all this was done with an intent to procure the said heiress to be married to the second son of the said Earl.

III. That the said Earl hath received very great sums of money, besides the ordinary revenue, which have been *most* wastefully spent, and far greater sums than ever issued forth for secret service, without account ; the King's debts remaining unpaid, the stores unfurnished, and the navy unrepaired, to the great discredit and hazard of the King and Kingdom.

IV. That the said Earl hath violated the rights and properties of the people, by stopping, without authority, their legal payments [due] in the Exchequer.

V. That though the office of Lord High Treasurer of *England*, is always [very] full of great and necessary employments, yet the said Earl hath also assumed to himself the management of the *Irish* affairs, which were, in precedent times, dispatched always by the Secretaries office, and passed in council, thereby interrupting the said Secretaries ; and neglecting his own, subtilly enabling himself, the better to convert a [very] great sum [of money] out of the *Irish* revenues, to his own private advantage.

VI. That the said Earl hath procured great gifts and grants from the Crown, [whilst under great debts, by warrants countersigned by himself.]

VII. That about the 4th of Dec. 1674, at the hearing [of] a cause in the Treasury Chamber, some Acts of Parliament, now in force, were urged against a Proclamation, and [contrary to] what his Lordship aimed at ; whereupon the said Earl, in contempt of the law, uttered this arbitrary expression, "That a new Proclamation is better than an old Act," several of his Majesty's subjects being present ; and, upon his Lordship's report to the Privy Council, the person in question being a foreigner, and not obeying such Proclamation, but pursuing his right at law, was banished [the Kingdom.]

[Debate on the first Article.]

Mr *Powle.*] By former patents—"Weekly to pay in to the Exchequer, and by warrants signed by the Chancellor of the Exchequer ;" this lay grievous upon the Lord

Lord Treasurer, and he procured a warrant for a patent for the sole disposing of the money himself. The Chancellor of the Exchequer hearing of this patent entered a *Caveat*, and the patent was stopped and overthrown. When that would not do, the Treasurer gets a warrant for this patent, whereby no order is mentioned, to pay weekly into the Exchequer—Would have it examined whether by this patent Mr *Mounteney* pays any money into the Exchequer, except by order of the Treasurer, ever since this patent passed—And would know whether any warrants for pensions are paid at the Custom-House, without any notice in the Exchequer, or knowledge of it—And whether, in particular, the Duke of *Lauderdale* hath not a pension of 3000*l. per ann.* paid out of the customs.

Mr *Garraway.*] The commissioners of the customs do not handle a penny of that money, and he begged of the King he might rather go home and quit the employment, than have that imposed upon him—Mr *Mounteney*, the Patentee, is at the door, and will inform you further.

Mr Secretary *Coventry.*] The world does not expect that a Secretary of State should understand all the offices of *England*—’Tis well if he understand his own—For the Privy Seal, they advice with the King’s Counsel. If the warrant be docketed right, they go no farther—The Secretary has no office of correction—But if any man enters his *Caveat*, till—acquainted with it, the King gives a hearing—The Chancellor of the Exchequer did desire the Patent mentioned might not pass without hearing; he was heard, and so the Patent passed—He looked no farther than the docket, but did not look whether countersigned by the Treasurer, or not—if the Attorney-General has viewed it, the Secretaries conclude it legal, he being the judge of that.

Mr *Powle.*] If the Lord Treasurer signed it, if it so appears, he is the procurer of it.

Sir *John Hotbom.*] It is the part of the King’s Coun-

sel to answer the illegal advice, and not the Lord Treasurer, unless he did it himself without the Counsel.

Mr Garroway.] Some warrants for small sums have been from the Treasurer—By tally into the Exchequer, all warrants.

Sir John Hotham.] The Treasurer is not thought a lawyer, and would not have him bear the faults of other men.

Mr Mounteney was brought to the Bar.

The Speaker, by the House's order, asked him, Whether by the former Patents payments were to be made of the customs weekly into the Exchequer?

Answer. Such warrants as should be ordered by the Lord Treasurer, and warrants from the Commissioners of the customs—The remainder was paid to the Exchequer.

Question. Whether all these warrants were signed by the Chancellor of the Exchequer?

Answer. Then they were.

Question. What practice was observed by former Treasurers, before Lord Shaftesbury was joined with Lord Southampton?

Answer. In the late King's time warrants were issued out by the Lord Treasurer, without the Chancellor of the Exchequer. In Lord Southampton's time they were issued out sometimes single, and sometimes with the Chancellor of the Exchequer joined.

Question. By whose warrant in striking tallies?

Answer. By the Lord Treasurer's warrant only, lately, and it has not been paid without the Lord Treasurer's particular direction.

Question. Whether the Patents are entered at the custom house?

Answer. They are, and in particular the Duke of Lauderdale's, whose payment there is quarterly.

Question. Whether he can name any other?

Answer. Creation money is there paid, he thinks, but remembers pensions were paid when the Treasury was under Commissioners management.

Question.

Question. What difference in this Patent from his former?

Answer. The first Patent was to account a part for wines and vinegar, but that was troublesome to the collectors of the out-ports ;—whereupon they were made entire upon our account, and his Patent altered thereupon.

Questions to Sir *Robert Howard*.

I. Whether any sums, kept back out of the Exchequer, are accounted for in the Exchequer?

II. Whether a Patent under the Great Seal, or warrant under the Privy Seal, be a warrant for officers of the Exchequer to pay money upon, unless entered in the Exchequer?

III. Whether the Patent for the Duke of *Lauderdale's* pension, be enrolled in the Exchequer?

Sir *Robert Howard*.] He is a sworn servant to the King, in his office, and would have the questions in writing, and show them to the King for his leave to answer.

Lord *Cavendish*.] He supposes no oath of secrecy taken by him, and he thinks he ought to give you an account.

Sir *Nicholas Carew*.] If it be so difficult to have an account of things, he thinks it inconvenient to have such officers as *Howard*, that will not tell the truth when demanded by the House—Believes he has no oath of Privy Counsellor.

Sir *Thomas Littleton*.] There is no such obligation of secrecy lies upon *Howard*, nor ever was practised; and moves that the House may declare an opinion in it.

Sir *Charles Wheeler*.] If *Howard* will not do it, the matter is upon record, and you may easily come by it.

Col. *Titus*.] As for obtaining the King's consent before he answers any man, any man may see it---Public money is all recorded, but if he desire till to morrow to search his books, 'tis a modest request, and would have it granted him.

Mr *Vaughan*.] You are now the Grand Jury of the nation, and suppose that the King should command him

not to answer to the questions, his going to the King may put a hardship upon him, if the King should so command him—You may for the public safety command his testimony.

It was put to the question, whether Sir *Robert Howard* should answer to the questions proposed, relating to his office in the Exchequer, and carried in the affirmative.

The Speaker then put the question to him, Whether, since the Patent was granted to Mr *Mounteney*, less money than formerly was brought into the Exchequer, from the customs, and more money diverted from the Exchequer?

Sir *Robert Howard*.] Formerly the Patentee paid the money, and it was never entered into the Exchequer, as the more easy way for the persons to get their money, than when paid in the Exchequer—What is received above the pensions (which are good store) is paid by tally into the Exchequer—The pensions are never recorded—All the out-lying moneys are foreign to his office---If the Chancellor of the Exchequer should join with the Lord Treasurer in warrants for payment of money out of his office, he cannot pay a penny. No man can cheat in the Exchequer, they never paying any money out of method. As for the Duke of *Lauderdale's* pension, he knows nothing of the grant of it, and many others. Some pensions are enrolled both in the Custom House and the Exchequer, enrolled in both places, and paid in both places very honestly.

Sir *George Downing*.] The four Tellers of the Exchequer by their oath are bound not to tell one another what money they have. As he is Commissioner of the Custom-House, he can tell you what money the Tellers have ---From thence he should abuse you to pretend to do it any other way. Mr *Mounteney* can give you an account of it ; before he pays the Treasurer's warrants, he must pay merchants debentures, and he must pay the charges of the Commissioners of the customs ; likewise for discovery of fraud, fire, candles, and boats. The debentures are paid by the Lord Treasurer's warrant, or the Com-

Commissioners. He knows no new way of payments, for the said Treasurer cannot divert the course---No warrant, before or after it is entered, but is taken notice of before let pass, to be either my Lord Treasurer's warrant, the Great Seal, or Privy Seal.

Sir John Duncombe's Secretary being called in, was asked by the Speaker, Whether less money came into the Exchequer since the Patent was granted than before?

Answered. That he knew not the Exchequer affairs, and could give no account of them.

Mr Sawyer.] Some of the revenues are charged in the Exchequer, and some not charged. The receipt of the Exchequer is the ultimate receipt. (*And so he gave an account of the Exchequer method.*)

If the Lord Treasurer grants any warrant contrary to the powers in his Patent, he must refund it to the Crown. If the Lord Treasurer grants ever so many warrants, and if there be no enrollment of them, the Chancellor of the Exchequer may refuse them. Many of the revenues are never chargeable in the Exchequer. For the customs, there is no charge but a farm rent. If it depends upon collection, there is an Officer on purpose for it—And for the Excise, there is a particular Receiver, and Auditor—A distinct office. If there be any Patent for a pension, or other payment, out of the Customs, it ought to be entered at the Custom House, in the office where the payment is made.

Mr Powle.] When Lord Cottington, the Chancellor of the Exchequer, was in Spain, there was a patent granted from the King, that the Lord Treasurer might sign warrants in the Chancellor's Office—More money has issued out of the Treasury irregularly, in this Lord Treasurer's time, than in any before him.

Sir Philip Warwick.] The Lord Treasurer can do nothing in his Office, but by the King's warrant under the great Seal, or the privy Seal—Any privy Seal, or Patent, must be entered in the Office of the lower Exchequer—By virtue of the Great Seal, or Privy Seal, an order is drawn to make debentures.

Mr Powle.] The patent for the Excise runs “to pay the money as the Lord Treasurer shall direct;” this empowers him to give verbal orders, which are never recorded, which is against common Law, and by *Hen. III. 1 Eliz. I. 1 Rich. II.* against Statute law, that grants this revenue to the Crown. This patent brings the Treasury somewhere else—and [as to] consent of the Chancellor of the Exchequer, would have that examined, and, upon enquiry, you will find it countersigned by the Treasurer, without the advice of the Chancellor of the Exchequer.

Sir Charles Wheeler.] The Excise is governed by Commissioners in the Country, with subserviency to the Commissioners at *London*—This patent the Treasurer found before he came to his place. Sir *Stephen Fox*, who had great payments assigned him out of this revenue, for the payment of the Guards, and other uses, because of the ill correspondence he had with the Commissioners of Excise, had much trouble in it. Mr *Kent*, therefore, the Patentee, was chosen as a person able for it. The Lord Treasurer questioned, whether he might make a Patentee for Receiver-General, when, as heretofore, it was in the hands of the Commissioners of Excise. This was the ground of the Patent—At last, by full and joint consent of the Chancellor of the Exchequer, the thing was agreed upon—Till the Patent coming to the sealing, a *Caveat* was put in by the Chancellor. Mr *Kent* was much disturbed, because the Patent was stopped. This was done the 8th of *April* last, and no longer before.

Mr Garroway.] This was designed for a temporary Patent only. The Chancellor of the Exchequer being sick, he could not for the present attend a hearing. As to calling in the Chancellor’s man, he knows not what he can say for his master, and in this would not hear the man, when you may hear the master. This Patent may seem to cast dirt upon the Treasurer, but he doubts not but the Treasurer will clear it.

[The question being put, whether it appears by this Patent that there is matter, in the first Article, fit for an impeachment, it passed in the Negative.]

Wed-

Wednesday, April 28.

[Debate on the Patent resumed.]

Mr Powle's Questions to Sir John Duncombe, Chancellor of the Exchequer.

1. Whether he had the knowledge of the proposals of Mr Kent's Patent, before the passing of that Patent?
2. Whether the Treasurer may not, under colour of these Patents, dispose of the Treasury without warrant either by the great Seal, or privy Seal?
3. Whether, by colour of this Patent, the account of the revenue of the Excise may not be taken away from the Exchequer?
4. Whether this Patent be not contrary to the course and constitution of the Exchequer, and the acts of Excise?
5. Whether private Tallies may not subject the Excise to corruption.
6. Whether, by colour of this Patent, the whole account of the money is not taken from the Exchequer?
7. Whether the Patent was not by the Treasurer's procurement, and signed by himself, without the consent of the Chancellor of the Exchequer?

Sir John Duncombe.] To the first Question "whether he had knowledge of the proposals of Kent's Patent" *Answers,* That he entered a caution against Kent's Patent. In his absence from the House, by reason of sickness, has heard of great alterations in this place, an impeachment brought against the Lord Treasurer—Humbly prays the House to consider the condition he is in at this time, sick; but will give as good an account of it as he can, and tell you how this business did first arise. There was a contest between Sir Stephen Fox, and the Commissioners of Excise. My Lord Treasurer called him to hear how the matter was. The use the Treasurer made hereof was fair—By both to bring the interest of money lower in the Bank; when this was done, he had no more to do with it. When the Treasury was in Commissioners hands, Mr Wall had a Commission for it, but in paper only. Now the question was, whether that Commission should be

be in paper or under the great Seal. Sir *Stephen Fox* desired it might be rather under the great Seal, to confirm that the Tallies struck in course, should be paid in course — Things the Treasurer has the disposing of, never came before him. He knew of this Patent two or three days before he fell sick; he got a copy of it, and found extraordinary powers in it; before *Easter*, about *Good Friday*, he was told it was at the Lord Keeper's, passing; upon which he sent his Secretary to the Lord Keeper about it, who sent him word that he heard of things in the Patent, by report, and would discourse them with him, which he did after dinner, and then desired the Keeper, that, if things were so as they were represented, before the Patent passed, he might advise with the Attorney General, being a better judge of these things than he was. The Keeper bid him go to the King, but he, being ill, desired the Keeper to speak to the Treasurer about it. On *Monday*, Mr *Bertie* came to him, from the Keeper and Treasurer, to let him know that a pressing necessity there was that the Patent, by reason of clamour, should pass, but that he should be heard. The Seal passed with these cautions. He has waited upon the King those mornings he could for his health—Undoubtedly, had he been heard there, he had never come before you—if a thing be exorbitantly done, would have you bring it to its course, without reflecting on a great person. If the King think fit to pass the Patent upon these terms, he has nothing to do, but to pay obedience to it. Whether you will examine this, or leave it before the King, to whom he has appealed, and whose servant he is, leaves it to you;—the end will be only the setting the thing right.

[Debate on the Second Question.]

Sir *Robert Howard.*] The Question is, “whether the Lord Treasurer can, by this Patent, dispose of the Excise, without warrant by the great Seal, or privy Seal,” and so become liable to no account. He thinks himself happy that he shall say nothing here, but what he has said before in another place. As good service may arise from this Patent,

Patent, as ever was done to the nation, he thinks—Before this Patent was granted to Mr *Kent*, the Lord Treasurer sent for him, and told him, “here are debts, and there must be credits, and he would do according to the constitution of the Exchequer.” When he saw *Kent’s* proposals to the Commissioners of Excise, he desired the Treasurer and Chancellor to do no such thing, for the proposals would bring things to utter ruin in the Exchequer—Says the Treasurer, “on the one side, I may do amiss in the Exchequer, and on the other side, I hazard the King’s credit, if I do it not.” He showed him how it might be done by the Tallies, according to law, and all returned into the Exchequer. The Treasurer was pleased with it, but, after this, he never knew of *Kent’s* Patent, nor saw it, till he saw it here, on the reputation of a Gentleman. The course of the Exchequer is as ancient as the law of the land. There is a docket usually passes with the Patent, and that will give great light to it—It is a question, “whether this be usual? In the dockets all the contents of the Patents must be recited—This has been done, and hopes no prejudice may arise upon it. Now ’tis a question, “whether this Patent does not take away the legal account in the Exchequer?”—Tallies of anticipation take all things out of course in the Exchequer, without doubt—By no constitution nor law, but money must be paid in *specie* into the Exchequer; and what is otherwise is different from the law of the Exchequer—Tallies of anticipation were much more [usual] in the former Lord Treasurer’s time, than this—Tallies of anticipation do expose the King’s accounts to interest accounts. “What will you give us, and I’ll pay you?”—The officers will do it. He cannot tell whether the Patent was by the Treasurer’s procurement—He has told you that his judgment was to proceed legally in the Exchequer, and he knows nothing of passing the Patent.

Mr Sec. *Williamson.*] This Patent passed not his office.

Mr Sec. *Coventry.*] Was ill of the gout when the Patent passed.

Mr

Sir *Stephen Fox**.] Knows the beginning of this Patent—The Chancellor of the Exchequer has saved him the labour of saying some things about it. It began in April last, at the disbanding of the army. My Lord Treasurer then sent for the Cashiers—He gave no other assignments to them, than upon the Excise, and would ease the rest of the revenue, and burthen the Excise, that, by competition between the Cashiers and the Excise, interest might be lowered. All this was transacted between the Commissioners of the Excise, and *Fox*, before the Lord Treasurer, and the Chancellor of the Exchequer. *Fox* proposed a Commission under the Great Seal, and not a warrant from the Lord Treasurer, to be preferable before all payments to invest *Kent* with the greater authority—and none preferable to these Tallies moneys were upon. He knows not of the framing of the Patent, but the method of payment, preferable to all others, he promoted only. The authority of it was referred to the King's Counsel—200,000*l.* was borrowed upon this security—They lent it upon Tallies, and have collateral security of persons. The scope of the Patent was only to secure persons that advanced money. Though the Excise office be not so regular as the Exchequer, yet 'tis very exact for money registering and checks. No man borrows money at interest but *Kent*, whereas heretofore they vied who should get most money from the Bankers.

Sir *Thomas Lee*.] *Kent*—but one borrower!—The method in the Excise exact, being registered, and therefore the interest stated!

Sir *Stephen Fox*.] The farmer never pays a penny of the Excise to the receiver, but at the same time has the Comptroller of the Excise's receipt.

Mr *Powle*.] All the officers allow this Patent to be an exorbitant power—This is so clearly owned, he need not repeat it. This clause is inserted into the Patent, and no man knows by what means. Till it is made appear that

* Paymaster General of the Forces, and afterwards one of the Lords Commissioners of the Treasury. He died in 1716, aged 89, and was father of the present Earl of Ilchester.

it was advised by the King's Counsel, he will not believe it.—This way destroys all method in the Exchequer—Hears no man say, that ever such a power was by Patent before. Letters Patent to pass so suddenly as this has done, looks like practice—Like a man that robs me of my purse, and says, he borrowed it of me for a time only. This may make the King's Counsel innocent, but the Lord Treasurer to blame for this haste in passing it, with which it is not consistent. Twelve months time was proposed, and the thing under consideration *November* last, the Chancellor of the Exchequer never consulted in it—He has had opportunities more than other men, to make this enquiry into the Patent, and the circumstances belonging to it. Would have the first question, “Whether this Patent be not illegal.”

Serjeant Maynard.] Suppose this Patent said nothing how this payment is to be made, or how to be accounted for; the question will be, “Whether an affirmative clause, in an Act of Parliament, without a negative clause, takes off the power the King had before to grant such a Patent.” If the King be not restrained by any clause, he may use that power he had generally before. Affirmative words do not put a negative upon King—The court of augmentations was set up, and they had power of the revenue, and all leases and grants of the King's lands, under that Seal---And the King granted a lease under the Great Seal, of some lands---'Twas adjudged that affirmative words, without a negative, do not make a restraint upon the King. -There are divers revenues which come not into the Exchequer---Desires the excuse and pardon of the House, if he dares not trust his judgment for the present, in such an assembly as this; but says, that, in ordinary words, the Patent puts the account out of the Exchequer---But, under favour, suppose the Patent clearly illegal, 'twas ill to advise it, but what's your question? If not illegal, no crime, yet in the event and prospect of it it may be ill---'Tis no ground of an impeachment not to understand the law. The Treasurer's case may be that, in some points, he doubt-

ed the Patent---And he knows that, in the case of the Stannaries, he was very careful to answer the law in it. There was a present occasion of raising the King some money---He sees not that the Treasurer was the contriver of the Patent; but those who would advance money proposed it---If a great officer of State, not bred to the law, follows the advice of the King's Counsel, and if the King is found not to be restrained by general words, in an Act of Parliament—"illegal" and "inconvenient" are things very different, and are different questions. Thinks this Patent no ground of an impeachment upon this article.

Sir *William Coventry*.] He sees no ground of impeachment of the Lord Treasurer upon this article of the Patent, the illegality of it not being cleared by the lawyers. We have seen by what steps this Patent passed ---Who advised it? Rightly placed upon the Privy council. But 'tis a hard thing that all the King's Ministers of State must answer all circumstances of law. If so, then 'twill follow, that no great officer of State but must be a studied lawyer---Will not defend nor oppose the Treasurer, but if it be found that the King's Counsel were neglected in the advice, or their advice not followed, should think the Treasurer to blame; but the King's Counsel hands him to it, and, all due circumstances requisite considered, he is far from impeaching the Treasurer---If the question should be put, upon the impeachment of the Treasurer, he fears the Patent would be forgotten, and nothing be said to it. Here are more articles against the Treasurer than this---The busines of the navy you have appointed to hear, and you will be furnished with great business for the short time you have to sit---But would have some discountenance of this Patent now---The end of this Patent is that trick of making new credit for the King---The subjects property is in the King's credit; that has received such a blow, that it is free for men to speak to it here. 'Tis the anticipation of the King's revenue, and the facility of it, [that is] an inducement to spend more than the revenue, and to entrap men, by such securities, in the ruin of them-

themselves, wives, and children. If this goes on, it must terminate in breach of property, and the Parliament, when it comes to it, must raise new levies on the people, or the nation be destroyed, and lost, for want of money to supply the necessities of the government. This makes his fingers itch at the Patent. 'Tis said that the Treasurer is not justified without the Great Seal, or Privy Seal, for payments, yet he that pays it is justified to the receiver; 'tis true, here is the Treasurer's order, but no Great Seal—He says, he will not allow that Auditor; then he applies to the Treasurer, and if he will be so adventurous, the Auditor resorts to the Treasurer, who probably will not make stop of payment, contrary to the intention of the Law; and so the King is put to an after-game for his money. What, if the money be squandered away, and the Treasurer in disfavour, and the King put to an after-game?—Though in other things the Chancellor countersigns the warrants, in this the Treasurer signs only. The Crown was never thought to have too many locks and keys for money. When the order is signed to the officers of the Exchequer, they must have Seals—As now the Patent is, here's no retrospect, but still the King must play an after-game. He avows he has long been full of this matter of anticipations, and would have discountenance of it. Would have no discountenance put upon the old and safe way of registering in the Exchequer, and would vote the Patent “dangerous, and contrary to the course of the Exchequer.”

Sir George Downing.] Those that move the vote for the Patent, would not involve the Treasurer in it; others say, that such a vote will reflect upon the Treasurer; but if it be plain that it will reflect, moves to pass a vote, “that as soon as the articles shall be gone over, you will take the Patent into consideration.”

Mr Swynfin.] The Debate is, whether this article be a ground of impeachment, or upon the Patent, as contrary to the course of the Exchequer. If it comes on the Lord Treasurer, whether by his procurement or not, it reflects upon you—The question with reflection on the Patent is a separate

separate and free from the Lord Treasurer. Should the Patent be spared, for the Treasurer's sake, it would look like too great partiality—When you have cleared the Treasurer, then you come to the Patent, the ground of the Debate.

Resolved, That there is no ground of impeachment against the Lord Treasurer in this Article.

To the third Question “Whether by colour of this Patent, &c. the account &c. may not be taken out of the Exchequer.

Debate on the third and fourth Questions.

Sir *Nicholas Carew.*] Moves, that the opinion of the House may be known, whether this be a lawful Patent or not. He's not a person that expects any office.

Sir *John Duncombe*, *answers*, He had been examined before the King to this interrogatory, as he is now before you, and might he have spoke his meaning and opinion, he should there have desired the King's Counsel might be heard, and desires you will do so here, because some of the Exchequer Officers are present in the House.

Sit *Thomas Meres.*] We men that come out of the country, and would keep the King's revenue from ingrossing, would know whether it be not clear that this Patent has the sole disposition of the money without Great Seal, or Privy Seal, and would hear the Long Robe about it.

The Speaker reproved Sir Nicholas Carew for reflecting.

To which Sir Nicholas Carew said,] He has no office, and expects no office, and means what he said no otherwise.

Mr *Sacheverell.*] You are moved to have the opinion of the Long Robe, to pass your judgment upon—*Duncombe* refers himself to their judgment.

Mr *Powle.*] Those gentlemen of the House employed in the Exchequer, know the course of things there better, he supposes, than the Lawyers, and would hear them.

- Mr *Vaughan.*] You interpret matter of Law in this, and he would have the Long Robe heard.

Sir *Henry Ford*] Would have it enquired, first, whether this Patent be illegal, or no ; and then, whether the Lord Treasurer has proceeded thereupon with ill intent. A man may do a thing amiss, with a good intent.

Sir

Sir William Coventry.] Conceives the Long Robe necessary, but not yet, to be heard. Hear the Officers of the Exchequer first—They may enlighten the Long Robe, and then their opinion is seasonable to be given.

Serjeant Maynard.] You now examine matters of fact—The course of the Exchequer is the course of law—The Judges would, in such cases, examine the Clerks of the Exchequer; their course is the course of Exchequer law. If you mingle matters of discourse with matters of fact, men cannot remember them. You are to examine, whether the Patent goes to the matter of that account.

Col. Birch.] He may fail in his prudence, but shall never, he hopes, in his fidelity to this House. He is the sole Auditor of the accounts of the Excise, and they pass from him to the Exchequer. He will tell you the whole truth, so help him God!—Till he is told of it, will keep his office—When the receipt of this money was taken out of the hands of the Commissioners of Excise, it was put into the hand of Kent, and a short warrant was sent to them, that Kent should receive the money, and be accountable to the Treasurer—He has told the Treasurer, that, in case warrants should come to him, and they interfered with law, he doubted he should come to him about them. He knows little of the law, but would know so much as to do his office—He brought the laws of Excise to the Treasurer. “The business is too big for you and me,” said the Treasurer, “therefore go to the Attorney General, and lay your objections before him;” and he would do nothing, till satisfied in the legality of it. He went to the Attorney General, and objected, and debated, something with him, who said he would wait upon the Lord Treasurer, and would give him satisfaction in it. The Attorney did soon afterwards draw up a book and set his hand to it, as the Clerks told him, but he never saw the patent nor book—Shall say only, that, notwithstanding the clause in the patent, he assures you he shall not pay Mr Kent any money, without the broad seal, or the privy seal, for it, except necessary wages, and other small matters.

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Mr Powle.] Whether *Birch* will pay it, or no, is not the question, but, whether the Treasurer has power, by this Patent to do it, or no, is the question.

Mr Attorney Montagu.] Though *Birch* will not pay money without the Great Seal, or Privy Seal, yet thinks the Treasurer not empowered to do any thing. Ld —'s case—No man can dispose of the King's revenue, without either the Great Seal, or the Privy Seal—The Treasurer's very original Patent has general words in it to empower him, but the law imposes the Great Seal, or Privy Seal, upon him in all payments. If he does it without, he must refund, so that the Patent excludes not Privy Seals, nor diverts the account of the money from the Exchequer, but the officers there may call for an account of it.

Sir Thomas Lee.] If Gentlemen are not ready to give an opinion in law, why do they first give an opinion of the Patent? “Whether by colour of the Patent, the whole account is not taken from the Exchequer”, is the question.

Sir John Duncombe.] He cannot, and ought not, to speak of this Patent, but must refer it to the King's Counsel. Unfortunate hands, made use of by the Lord Treasurer, may undo any Lord Treasurer in the world. If the House thinks this power is in the Patent, *Kent* may obey it with safety. If money be paid by such warrants from the Treasurer, where and to whom must it be accounted? He is accountable by tally in the Exchequer, and he must produce it. The order of the Exchequer, if known, would be found to be the greatest beauty and œconomy in the world. What authority or warrant, authorized by the Great Seal, may be, without expressing the cause? If for the navy, or secret service, all are expressed—These things are made public.

To the fifth Question, “Whether private tallies may not subject the Excise to corruption?”

Sir John Duncombe.] Supposes you in debt—Estates are exposed to hardships as other men are, to take up money upon their private occasions*.

* The answer to the sixth Question seems to be omitted.

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To the seventh Question “ Whether the Treasurer’s Patent was not without the consent, &c.”

Sir *John Duncombe.*] Knows not how the Patent was countersigned, nor how it passed.

Resolved, That there is no ground of impeachment against the Lord Treasurer in this Article.

Thursday, April 29.

On Mr *Powle’s* motion for witnesses to be summoned, to prove the second Article against the Lord Treasurer, he was ordered to name them. He named the Lord Mayor*. It was said to be of dangerous consequence to send an order to summon witnesses without naming them. Several other persons being named, as one *Salter* and *Vogelfung*, they were summoned to attend.

Sir *Samuel Barnardiston.*] There is one *Aire* has been dealt withall, and he cannot be found.

Col. *Strangways.*] Would not have orders of this House granted like Justices of the Peace’s blank warrants.

Sir *John Birkenhead.*] Some of these witnesses stand excommunicated, and it may be they cannot come here into the House, it being a Chapel.

* Sir *Robert Vyner*, of whom the *Spectator* (No. 462) relates the following story: “ King *Charles the II*, more than once, dined with his good Citizens of *London*, on their Lord Mayor’s Day, and so he did the year that Sir *Robert Vyner* was Mayor. Sir *Robert* was a very loyal man, and if you will allow the expression, very fond of his Sovereign; but what with the joy he felt at the heart for the honour done him by his Prince, and thro’ the warmth he was in with continual toasting healths to the Royal Family, his Lordship grew a little fond of his Majesty, and entered into a familiarity not altogether so graceful in so public a place. The King knew very well how to extricate himself in all kinds of difficulties, and, with a hint to the company to avoid ceremony, stole off, and made towards his coach, which stood ready for him in *Guild-Hall* yard. But the Mayor liked his company so well, and was grown so intimate, that he pursued him hastily, and catching him fast by the hand, cried out with a vehement oath and accent, “ Sir, you shall stay and take the other bottle.” The airy Monarch looked kindly at him over his shoulder, and, with a smile, and graceful air, repeated this line of the old song “ He that’s drunk is as great as a King”; and immediately turned back, and complied with his landlord. This very Mayor afterwards erected a statue of his merry monarch in *Stocks* market [where the Mansion-House now stands] and did the Crown many and great services; and it was owing to this humour of the King, that his family had so great a fortune shut up in the Exchequer of their peasant Sovereign.”

Sir *Samuel Barnardiston.*] Names one Mr *Brandy* to be summoned; supposes him to be the minister that married Mrs *Hyde*, and Mr *Offley* the Counsellor.

Sir *Thomas Lee.*] Mr *Offley* is not brought here to be examined in any thing to betray his client. A Gown-Man, in matters of the Crown, ought not to be spared any more than another man.

[Mr *Brandy* and Mr *Offley* were summoned to attend, and the Debate was adjourned to the next day.]

Sir *John Knight.*] Speaks to the business of the day. Would have the Debate of Dr *Burnet's* evidence put off till we have the King's answer, which we expect, and would now go upon the business of the navy.

Sir *Thomas Lee.*] Such words as *Burnet* informs you the Duke of *Lauderdale* should say, if proved, are of the most dangerous consequence that were ever taken notice of in Parliament.

Sir *John Ernly*] Dr *Burnet* has written so great encomiums on the Duke of *Lauderdale*, in some of his writings dedicatory to him*, that sure his evidence will be of little moment against him.

Mr *Vaughan.*] This epistle dedicatory of *Burnet's* was but a compliment to *Lauderdale*, who was then Lord Commissioner of *Scotland*, and not much to be regarded—Would adjourn the Debate for a week.

Mr *Dalmaboy.*] The book was an encomium on the Duke of *Lauderdale's* justice. The Duke has done *Burnet* great kindnesses. 'Twill be said abroad to be done out of spleen and malice here, and if countenanced will destroy all society.

Col. *Birch.*] No man believes that such words as *Bur-*

* This was a dedication to the Duke of *Lauderdale*, of his *Vindication of the Authority, Constitution, and Laws, of the Church and State of Scotland*, published in 1672. The author being afterwards reproached for representing the Duke's character, very differently from what he had done in that dedication, replied, "That the book was written

when the Duke was the King's Commissioner in *Scotland*, and dedicated to him at his own request, and that if what had happened a year and half after that had given him other thoughts of that Minister of State, it was no proof that he wrote disingenuously at that time."

net tells you the Duke should say, were uttered at the Market-Crofs. Where there is matter let us go to the bottom of it.

Sir Rob. Howard.] *Dalmahoy* said, ‘that Burnet was set on to do this, and suborned.’ Would have him make the matter appear he has informed you of, this day sevennight,

Sir Thomas Lee.] For a man to be urged and persuaded to tell a truth of what is a crime against the Crown!—If it be a fault to inform, pray declare it so.

Sir John Birkenhead.] Burnet concealed the words, because he thought them not dangerous; but, after having written such a book to the Duke, he might have scorned to have done it.

[This Debate was adjourned to May 4.]

A Bill [was read the second time] to incapacitate persons from taking any offices of benefit, who are Parliament-men, during Parliament, and if any such persons be chosen, that election to be void. But the Borough, or County, may chuse the same person again, and that election stand good.

Sir Charles Wheeler.] He supposes one hundred persons in this House that would lay down their lives for their country. It may be, some few persons in this House are prisoners in the King’s Bench. But this is an extraordinary case; persons that have been with the King in banishment, and they, at the King’s return, for want, could not buy places of advantage whilst other men that staid at home, grew rich—Would have posts come upon particular men, and let it be laid on every man’s door, but rather would have it got upon honour—Every little fellow is brought upon his oath—And not what becomes a gentleman to say. This Bill is a great reflection upon us all, and, without cause, it creates a perfect incapacity in a man to serve his prince, and country, at one time. After all the inconveniences he has had these 30 years, thinks he should be highly tempted if he take an office—That Gentleman should have places of 4 or 5000*l.* per ann. and those that have been ruined have none!—Why should not those have offices that have suffered, as well as others? [Consider] the temptations of being disloyal in the late times. The King may be willing to give a man

an office (and he is a great man that would refuse it)—A man that has done ill, that the King might not remove that office to a Parliament-man, that has done well, and deserves it—strange that the King should be so confined! No age wherein men were of greater loyalty than this, and now, for a few Parliament-men that have offices, to cast a reflection upon the whole assembly!—

Sir *R bert Holt.*] This Bill is in direct terms, that no man that serves the King shall be capable of being a Parliament-man.

Sir *Thomas Lee.*] Is a great enemy to garbling the House, as he has heard some say this Bill is. It only leaves it to a man's choice, to stay here, or go home, and that when he has an office. There are many changes in ten or twelve years, when a Parliament sits so long. Men are altered in some capacity or other. This Bill relates to no man's office now in being—Knows not but that Parliament-men may be compelled to be Sheriffs; though, indeed, in time of privilege 'tis true we may not go into the county to attend, yet knows not when in prorogation you may not be compelled to it. For the reasoun he has heard from *Wheeler*, this Bill will make the King look that popular names may not be an inducement to chuse officers from hence, and so may not be deceived.

Sir *Courtney Poole.*] This Bill is a garbling the Parliament, and a new modelling the Government, from a monarchy into a common wealth.

Col. *Strangways.*] Observes that few are in office, that formerly have served the King—Neutral persons most. The guards are mercenary, and therefore dangerous. He that has endured all the heat of the day, would have him receive his penny too, but is for no more. Would not have those shut the door after them that have offices. Never was poor Prince, nor Kingdom, abused as ours is. No mariners paid, and yet those that bought their debentures at four and five shillings per pound, presently paid. For the danger he incurs and his service, he deserves an office. (For office of profit he desires none)

For

As for the office of Sheriff, no man will desireit, unless for *Yorkshire*. Would have all that have offices leave them, and be chosen to them again—And the King have liberty to remove them, and take them again—As that of Parliament-man in this Bill.

Mr Secretary *Coventry*.] Would willingly quit his office, if it hinders him from serving the King and his country here. Justices of the Peace, and the office of Deputy-Lieutenants require attendance in the country, though those offices are excepted in the Bill. Would not for any office, or place whatsoever, but discharge his conscience here. Some hardships will arise in this Bill upon men—*Dimmork*, Champion to the King by descent, must not be chosen a Parliament-man. That any thing should force a man to a new election, that forfeits it not, is very hard; whereas, by parity of reason, if his office incapacitates a man once, it should incapacitate him again. Any man may enter into a bond to his corporation, of a thousand pounds when he takes an office, after being chosen Parliament-man, to be forfeited. Is not your mace frequently sent for the gentlemen of the Long Robe, into the Hall to attend your service? You are pleased to make use of the Privy Counsellors to carry your messages to the King. Formerly they had cushions to sit on, but were thrown out of doors, and must they be thrown out of doors too? This Bill is not consistent with the government, and he would lay it by.

Mr *Vaughan*.] Though we are loyal, yet there have been parties in the Parliaments, court, and country; and, in many things, have desired to advise with their country, before they give consent. Men have varied in their principles, and 'tis natural for men to do so. Where an office is inconsistent with the service of the country in the person that has it, 'tis reasonable that place should chuse another person, and where that place has no jealousy to think they shall not be well served, 'tis for the honour of the person to be chosen again. Moves for commitment of the Bill.

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Serjeant *Maynard.*] If you make a law against such bribes as are given to come into a place to serve here, you would do full as much as by this Bill.

Col. *Titus.*] Never had any place at court, but what he has had these 25 years. Weighing all circumstances, he is against commitment of the Bill—There are reasons against the right of the subject—No reason why any man, but a fool or a knave, should be incapacitated to sit here. This is some invasion of the King's prerogative. If the King thinks a man qualified for an office, that is as much as to say “ You will not trust him that the country trusts.” You may hereby put the King upon a necessity of putting unfit men into offices. Suppose an Admiral at sea, either this man must not go to sea, or you turn him out for serving his country. These splendid and extraordinary things never yet did good. After the Long Parliament had passed the self-denying ordinance, they never did deny themselves any thing.

Sir *William Coventry.*] Differs from Sir *Thomas Meres* in his motion for adjourning the Debate. The hand that did it (himself) will stand, with all submission, to the judgment of the House in its determination, with the same heart he brought it in with. The Bill does not provide that great officers shall not serve the King. Those that have offices may be the safer in them, and those that have no places shall not get them from them that have. The old way was, men were chosen into Parliament, after they had been Privy Counsellors, and hopes so still, to be the better able to serve the country, and place they are chosen for. You are told “ ‘tis hard for an Admiral”—and “ that the Bill is not large enough for the Militia officers,” which may be answered—And all the others are no objections for throwing out the Bill. We have served here a great while, and, it may be, his corporation would not chuse him again because he has no office, that another may serve them better—Consider what may be the consequence. If qualifications change—and not only absence may make us ignorant of the affairs of the place we serve for, but our presence here may

may do it to the office also. Edicts may meet with a stop in the Parliament of *Paris*, in their verification, but seldom a defeat. This case, without this Bill, may be so here. In 13 *Edw. III*, a writ was prayed that none of that Parliament should be Viscount, (Sheriff) or other minister, and so it went out. Here is no injury to the person by this Bill; if he have no mind to the penalty of being chosen again, if he have an office, he may chuse what he will do. Whatsoever fate you give the Bill, he does highly acquiesce in your judgment, and believes, if the Bill does not pass, it may revive in future Parliaments.

Sir *Henry Ford.*] We find, by experience, that offices may be hurtful in Parliament-time, but we find that that popularity has done much more hurt.

Mr *Finch.*] Those, possibly, may speak to the sense, though not the acceptation of the House: The consequence of this Bill is, that the service of the Crown is incompatible with that here; when you consider a man so that he has betrayed one trust, to accept of another, he will come to his corporation, to be chosen again, with an ill grace. We are not to pull feathers thus from the King. There was a time when we had wages for our service in Parliament. If no suspicion upon a man then, why must an officer be suspected now that he gets by it? If thought necessary that he should have an Estate that is chosen a Parliament-man, by increasing it he is the better qualified; having the better stake, and the more reason to support his property. In that writ mentioned of *Edw. III.* there is a clause, "that no Lawyer should be chosen a Parliament man." The character of that Parliament was, *Inductum Parliamentum*. And Lord *Coke* observes, "that not one good Law was made in that Parliament." And if we should now say no Lawyer, nor Officer, should be a Parliament-man, it is in effect to say, no person that understands the busines of the nation shall be. For busines of the country, gentlemen may have experience, but for affairs of State they must be informed from Officers of State—Self-denial, is not so plausible an argument for this Bill. If the King knows not

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not able men here, where shall he send, hue and cry, after them in the country? The consequence will be, you must have all officers of State out of the Lords house,

Sir William Coventry.] Sees that the sense of the House is against the Bill; and whether "rejected" or "not ingrossed" be the question, is indifferent; but the country would think better of it, if the question were "not ingrossed" than "rejected."

The Bill on a division was rejected, 145 to 113.

Friday, April 30.

Serjeant Hardres being dispossessed of his Recorder's place for the city of Canterbury, in the time of privilege, was ordered to be restored to his office. The thing being a breach of privilege, the Mayor * and Aldermen of Canterbury, who displaced him, were call'd to the bar, being in custody of the Serjeant, where they all kneel'd, whilst

[*The Speaker told them*] That they were brought hither for a breach of privilege upon a Member of this House; whilst he was employed in the service of his country, they turned him out of the Recorder's place. They being Mayor, and Aldermen of so considerable a place as Canterbury, were supposed not ignorant, that when you violate the privilege of one Member of this House, you do it to the whole House. But finding you are sorry for what you have done, upon submission, he does discharge you, and you are discharged, paying your usual fees. *And the Serjeant was ordered to be restored to his place.*

[Consideration of the Articles against the Ld Treasurer remitted.]

Sir Samuel Barnardiston. The last term, he was present at a tryal, where it appeared a great privilege of the subject was broken. He has summoned a person to make it out, who is not to be found; and desires an order to send for him.

Mr Sackeverell.] You now see the danger of naming witnesses the other day, to subject them to be dealt withall; would have them sent for in custody.

Sir John Bramstone.] The articles against the Lord Treasurer laid, "That a suit was depending, in the Ecclesiastical court, and the King's Bench." If you grant no *certiorari*, yet your examining a principal witness here amounts to it. Neither plaintiff, nor defendant, have petitioned the

House,

* Thomas Enfield.

House, and you call in a principal witness, and blast the reputation of the cause. On the other side, you would take it ill that a jury should find a man faulty, that you should say is a good witness. By summoning this witness, you assume a power you never had before, pending the suit, to give credit, or discredit, to a witness. Should the Lords assume hearing a cause, before it has been at tryal at Law, you would think it a great oppression to the subject.

[Sir John Hotham.] Thinks the House concerned when any man contemns your order, and would have the person sent for in custody.

[Sir Samuel Barnardiston.] The persons summoned, were *Holmes*, and *Vogelsung* his partner.

[The Speaker.] Your orders are executed by the servants of the House, the Serjeant's men; they are proper to give you an account of them.

The Serjeant's men were called in.—They had the order yesterday, at six of the clock in the evening, and went to the person's house, [Salter's] who, the maid told them, was gone into Kent.

[Sir Samuel Barnardiston.] His man went thither this morning, and the person was said to be at home. As for *Vogelsung*, they could not hear of any such person.

Ordered, That a Messenger do enquire whether *Salter* hath been at his house, since the order [of summons left at his house, for his appearance.

[Sir Thomas Meres.] Was always of opinion not to hear witnesses at the bar; thinks it not for your service. Why will you go to proof, when it may be, the subject-matter of the article requires it not? 'Twill be of ill precedent for the future.

[Sir John Knight.] You have voted it already, and you cannot go back, and would hear them at the bar.

[Mr Ashburnham, the Cofferer.] He has a suit now depending in *Westminster-Hall*, and he fears he shall have the worst of it—Prays he may have leave to bring it hither, and he hopes he shall have the better of it.

Mr

Mr Sacheverell.] This gentleman has made a great reflection, and you see what he makes of you.

Mr Garroway.] Would forbear comparing our particular cases with those of the nation—Would have the gentleman forbear such reflections for the future.

Mr Sawyer.] Recites the articles about “the Treasurer’s marrying Mrs Hyde to his Son”—If you proceed to hear witnesses at the bar, you must examine the right of the marriage. These matters depending in the King’s Bench, for the lands; and in the Spiritual Court, for the marriage. Those courts going one way, and you another, will much reflect on the honour of the House.
Taken down to Order by

Lord Cavendish.] You are now moved to refer it to the law, against your order.

The Speaker.] You oblige not yourself, by order, to proceed to any particular article. The witnesses are summoned in general; not to one article.

Mr Sawyer.] The sting of the business is, whether the Lord Treasurer has endeavoured by great hand, against law, in this business. They are prior possessed of them—And should it fall out that he should be innocent—
Interrupted again to Order.

The Speaker.] You may lay all, or any part of the articles against the Lord Treasurer, aside. In a Bill, every man may make his exception to any clause. So in this case.

Mr Sawyer.] His meaning is, that it may receive its just decision in law, before you proceed in it here.

Mr Powle.] At the present, here are two questions on foot. He speaks to the article, whether fit to be received, or rejected. It is said “the matter is now depending in the inferior courts.” As to the right of the party, every man may relinquish it, as he pleases. As a right of the nation, any man may complain of it—Great men may so awe the people, that they dare not appear themselves; the public justice of the nation may be thereby obstructed, and so the poorer sort of subjects have their causes stifled, and suppressed. Pray let us have no such doctrine

doctrine here, to hinder and stifle complainants coming hither. This article is of great obstruction of justice. *Brandy*, the great evidence of this marriage of Mrs Hyde, sent for by extraordinary warrant, and kept to be tampered with to give false testimony!—He appeals whether a higher oppression of justice could be. In a violent manner, he has had rewards and promises, but by remorse of conscience, and shame for what he has said, is almost distracted with the sense of his sin. This way of enquiry will rather open the justice of the inferior courts. The thing may be deferred till the Parliament be up, and then carried how the Treasurer pleases—He fears that is the design.

Mr *Sacheverell.*] 'Tis a vain thing to go about to prove that, that when proved is of no force. Thinks it just these persons should be sent for, and strange, if this article be no crime, knows not what is. If obstructing of justice, and forcing a man to make oath before the King, at midnight, against his knowledge, be not a ground to impeach, he knows not what is.

Mr Sec. *Williamson.*] It may be expected he should give the House an account of what has past in this business. This Mr *Brandy*, was taken at the instance of my Lord Mayor, by a fair warrant, and brought to be examined before him; between eight and nine of the clock at night; as well to things relating to the person of the Lord Mayor, as the Heiress. There were no threats nor menaces used to him. Where he made a foul confession, and a shame to his coat, and in due time he will produce the warrant.

Sir *Nicholas Carew.*] It is said that justice has not been obstructed. There is a difference betwixt part, and all, but the frightening of one witness, may deter forty. Go on, either by the witnesses, or the question, “whether the article be a ground of impeachment.”

Sir *John Birkenhead.*] The Lord Mayor gave bond of 40,000*l.* that he should not keep, or detain Mrs Hyde from her liberty. Says my Lord Mayor, “Get me clear of my bond, and the Ecclesiastical Court shall have what they

they please ; Mr *Emerton* shall keep her company, or do what you please." These persons stand excommunicated for contempt ; this being a marriage and no banns asked, nor other circumstances, by judgment of that court, they are not allowed to be witnesses, but stand excommunicate.

Mr Vaughan.] Suppose the King goes a hunting, and one brings an action against one of the company, of trespass for riding over his ground, should the Secretary of State hinder the proceedings, it would be proper for your cognizance, but not whether trespass, or no trespass, but whether the law was obstructed. That the thing is so or not, not now the question ; but, whether the proceedings at law were suppressed by great hand.

Sir Thomas Clarges.] Whatsoever we do, we must not destroy the rights of this House. Men bring things hither, because they despair of having justice at *Westminster*, by being brow-beaten by great men.

Mr Sec. Williamson.] You are first to enquire if there be matter, and next, what proofs to it. Proposals passed from my Lord Mayor to the Treasurer, for the younger son, for Mrs *Hyde*. Upon the death of his mother, the Lord Mayor renewed his instances to be perfected. On January 8, he besought the Treasurer, that the articles might be formed. A few days after, came out the discovery of the precedent marriage with Mr *Emerton*. But there is such a fellow, practised upon, the person so beset in the country, no getting him up—This *Brandy*, was, by Mr *Emerton*, brought up to *London* in a stage coach ; but so guarded, not to be spoken with. He was complained of to be examined for bringing the young lady to a thing next felony, the party accomplice in a matter that might be felony. He was asked, what sureties he could get. It was answered, None. So he remained in custody, till the next day—I he warrant was "to all Justices of peace of *Middlesex* ;" and he thinks "through *England*, for attaching him." It was done without design to prevent any testimony, and making good the articles and marriage. This is what he knows in the matter.

Sir

Sir *Samuel Barnardiston.*] The Lord Treasurer visited my Lord Mayor, and desired him to use his interest for this match, and he would use his utmost interest for the repayment of his debt, due to him by the King, as a banker. My Lord Mayor, at last, declared he had made articles with Mr *Emerton*, and the young lady was married to him. The Treasurer then would know the person that married them. Both their servants went together to Mr *Brandly*, who owned that he had married them, with the time, and all the circumstances thereof. Whereupon the Treasurer gets a warrant from the Secretary to seize Mr *Brandly*, and did it with persons armed with swords and pistols; carries him away, and deals with him, that if he would deny the marriage, he should have 1000*l.* given him; if he would not, he should be ruined. This warrant, upon my Lord Mayor's letter, was served upon Mr *Brandly*—The King, the Treasurer, and the Secretary were present at his examination, and he was paid 20*l.* in part of the promised 1000*l.* Soon after, Mr *Brandly*, in great remorse, and disorder, complained that he was damned for denying the marriage upon his oath. Then upon giving him too much liquor, he denied it again. *Emerton*, after this, moves for an *Habeas Corpus* for his wife, Mrs *Hyde*. The Lord Mayor stands to an *alias* and a *plures*, and at last brings his daughter-in-law, Mrs *Hyde*, into court, and there was ordered to enter into 40,000*l.* Bond, not to restrain the lady. The Lord Treasurer, after this, for ten, or fourteen days, pressed the marriage with his son, and because the Lord Mayor would not consent to it, the Treasurer has endeavoured to throw all the odium upon my Lord Mayor. And this is the truth of the fact, and he will prove it.

N. B. Excommunicated persons being present at the marriage, the Ecclesiastical Court would not admit them for evidence, as to the marriage.

The witnesses voted to be called in, were opposed by the impeachers, who would first have had it voted, "that in the article is contained matter of impeachment."

Several

Several questions proposed in writing [by Mr Powle] and read, and delivered at the Clerk's table, to be demanded of the Lord Mayor of London* :

1. About what sum of money is it that is owing to you from his Majesty?

2. Did not the Lord Treasurer, several times, promise you that, in case the match betwixt his second Son and Mrs Hyde took place, he would use his prevalent and utmost interest with his Majesty to procure you payment of the debt, which his Majesty owed you?

3. Did not the Lord Treasurer enter into articles with you, under his hand and seal, in order to this match; and before sealing such articles, did not you acquaint him with *Emerton's* pretence of being married to the said Mrs Hyde; and what was the date of such articles?

4. Did not the Lord Treasurer advise and encourage you to enter into articles with *Emerton*, after the articles with his Lordship were sealed?

5. Did you not, about the 10th of January last, send down into the country a servant, at the Lord Treasurer's request, to accompany a servant of his, to examine the Minister that was said had married them? And what do you know, or believe, concerning his being apprehended by one of the Lord Treasurer's servants seizing and bringing him to *Whitehall*? And by what warrant was he so apprehended?

6. Did not the Lord Treasurer advise you to write him a letter, to the intent he might show it to his Majesty, the better to engage him in that affair? And who was present at such examination?

7. What did the Minister say to you, at your house, when he came thither, after his examination before the King?

8. Did not the Lord Treasurer appoint you what Sollicitors, Attorneys, or Lawyers, should be employed in the King's Bench, and Spiritual Court? Or did you use any but such as he first approved of? And did you not always consult with his Lordship in all the proceedings in reference to that affair? Or did you act any thing but by his direction?

9. Did the Lord Treasurer advise, and direct you to stand out an *alias et plures Habeas Corpus*, to a fine and contempt of the court, before you brought Mrs Hyde thither? And was he not displeased and angry with you, for your giving obedience to the court at last, in carrying Mrs Hyde thither, saying, "It was too great an adventure." What was the rule of the court, which the King's Bench made, in this business, and under what penalty?

10. Did the Lord Treasurer's Son, Lord *Dumblain*, obey that rule of court, and forbear making his applications to her, in order to marriage? And how often did he persuade her to be contracted to him, by breaking of gold? And how was she persuaded by Lady *Clifton*? And what were the discontents of the Countess of *Danby*, that day, and your apprehensions, touching his intention to have carried Mrs *Hyde* away from your house?

11. What provocation did you give your Counsel, to join with *Emerton's* Counsel last week, at the King's Bench Bar, to defame you? And wherefore did you so?

12. Did not the Lord Treasurer promise you, that, if this marriage succeeded, he would procure you the reversion of a considerable office for your Son, *Charles Vyner*? *Resolved, Brod.*

Debate on the applicableness of the Questions, proposed, to the Articles. *Motion made by Mr Powle, and carried, that the Question be referred to the Committee of the Whole House.*

Mr Powle.] Hears it asked: "whether these Questions are pertinent to the Articles, or not?" Most of these Questions will be so. Would know how far the King is debtor to the Lord Mayor. The Lord Treasurer was the first that profferred the payment of the Lord Mayor's debts, if he would agree to the marriage. If this be so, 'tis not foreign to the Article, for it sells the King's debt, to marry his Son—And if stopping a *Habeas Corpus*, &c. be not a crime, 'tis strange.

Sir Richard Temple.] Shall you examine witnesses with Questions not applicable to the Article? Though possibly they may to other matters.

Sir William Lewis.] You have entertained a charge, and 'tis fit it should be debated for what.

Mr Garroway.] 'Tis a justification to you, that such frivolous things as these, are no ground of impeachment, and would have them entered in your books.

Sir William Lewis.] When you ask a question, you must have the resolution entered also—'Twas an order that the paper of Questions should be brought up to the Speaker.

The Speaker acknowledged his error, that the Questions ought to be entered into the Journal.

[*Resolved,* That the fifth Question, only, be asked the Lord Mayor.]

When the Lord Mayor was to be called in, the Speaker informed the House, "That the Lord Mayor and Aldermen have been upon their knees here at the Bar, and you may refuse the Lord Mayor a chair. 'Tis a civility you give to a Lord that is a Peer, and not to a Commoner. The Judges who have come hither, have had chairs, because they have been called by the King's writ of attendance to the Lords house."

On a division, the Lord Mayor had a chair allowed him [141 to 137,] but he made no use of it.

Question. Did you send your servant with the Lord Treasurer's into the country, &c?

Lord Mayor.] As to Mr *Brandly*'s being seized when he came to town, he knows nothing but from Mr *Brandly* himself. He saw the warrant from Mr Secretary *Williamson*, and he thinks it as a Justice of Peace's warrant, and not extraordinary.

The Lord Mayor was dismissed.

Mr Sec. Williamson produced the copy of the warrant.

Sir Thomas Meres.] There was never such a warrant on such an occasion, nor such an execution of a warrant, from a Justice of the Peace.

Mr Sec. Williamson.] The Lord Mayor made application to the King for this warrant, and he had a command from the King, by my Lord Treasurer, to issue out the warrant; and he knows no farther of it.

Sir Nicholas Carew.] The person, by this warrant, is seized by armed men, and carried away in durance. This touches the subject.

Mr Powle.] Hears no direction, in the warrant, to any legal Officer's hand, only to a Messenger; and would have it considered, whether this is an usual way for a man to be sent for, by a Messenger, to be examined against himself.

[*Resolved,* That there is no ground of impeachment against the Lord Treasurer, in this Article.]

[Adjourned to Monday.]

Monday, May 3.

Sir John Holland delivers Mr *Taylor*'s petition, against Mr *Coke*; who was returned for *Lynn in Norfolk*, for the irregularity of

of the Election, and undueness of the return. [It was referred to the Committee of Privileges.]

[Consideration of the Articles against the Lord Treasurer resumed.]

On the third Article, "Moneys issued out for secret service, &c."

[Debate.]

Lord Cavendish.] He rises very unwillingly to speak in this business, having no prejudice to the Lord Treasurer, but only to serve the Public. This Article amounts to 2,000,000*l.* You have been told "that 1,460,000*l.* has been spent on the navy; besides a great deal on secret service, without account for it." Moves to have the examination of it referred to a Committee, and there he shall give a more particular account of the sums.

Sir John Hanmer.] 'Tis irregular to refer this to a Committee, you having taken the matter already into the House.

Lord Cavendish.] Means not that it should be referred to a particular Committee, but to the Grand Committee of the State of the Revenue.

Sir Thomas Meres.] If you will fortify and strengthen the gentlemen that will serve you, they are ready to do it—That is all, as he understands, that is desired.

The Speaker.] You having no proof of this Article ready, you must go to another, if you are not ready for this.

Mr Stockdale.] Could have wished, that others, who had formerly managed the revenues, had been questioned; it might have been some caution to this Lord Treasurer. It has been his duty to have advised the King, that his navy should have been in repair, before he suffered any anticipations upon the customs—But would not have any thing charged that may not immediately fall upon him; and, for the future, would have that part of the customs assigned for the navy, to be irrevocably for that use, and no other.

Sir Edmund Wyndham, Knight Marshal.] If as much money has been repaid for the use of the fleet, as has been taken from it, then there is no prejudice done to the

84 *Debates in Parliament in 1675.*

navy. This money was, it seems, taken upon some extraordinary occasion.

Col. *Strangways*.] It is a necessary consideration, when we come to the business of the navy, to take care that there may not be greater expences than the money assign'd for that purpose will bear; but to make an accusation against a person, and then to seek for matter—Likes not that such proceedings should be, as in Lord *Strafford's* case, to collect matter, out of peoples discourses and privacies, of his discourse to the King.—Would have proof produced to this Article, or lay it aside.

Sir *Charles Harbord*.] Would you have Articles of crimes, and then set a Committee to examine proofs? The question before you is “whether this Article is ground of impeachment for the time pasted.” If you postpone it, it's all you can do, but not refer it to a Committee.

Sir *John Coventry*.] Differs from *Harbord*. He has here in his hand, if you will give authority for search in the Exchequer, an account of such sums of money, received by the Treasurer, and undispos'd of, that the like was never heard of. Will you give power to witnesses, and he will undertake the proof.

Sir *Thomas Clarges*.] It is not for yours and the nation's benefit that maleversions should be examined of great officers? The not accounting for these sums is contrary to the Treasurer's oath. Is it not upon your books that gentlemen were ordered to inspect the Secretary's books? Why should you not give liberty to search the Exchequer? The averment of a Member, in matter of proof, is always of great authority. Read the case of Lord *Neville*, who was accused of Misdemeanor, and a witness at the Lords Bar prevaricated; the Commons committed him, for telling his evidence to two Members, and denying it again at the Lords Bar. You may remember, in the impeachment of Lord *Clarendon*, you agreed “that a Member's averment of an Article against one impeached, ought to be received.” We are the Grand Jury of the Nation, as the Freeholders are of a County;

County; if any one of them avers the indictment, they find the Bill. 'Tis reasonable that, as these gentlemen desire to inspect the records, you enable them to do it, as you have done in other cases.

The Speaker.] If Members cite such a record, or book, you send for the record, or book. Therefore if they will cite what particular book, or record, they would have, you may send for it.

Sir Thomas Clarges.] *Explains himself.* The sending Members to search the Signet Office, or the Secretary's books, is rather for the decency's sake, that you would not send for them hither.

Sir Rd Temple.] Averment of a Member is always to be understood "of his own knowledge". A general averment is never taken for proof—Let the gentlemen bring the particulars wherein the Treasury has been wastefully spent, and, unless they do so, there is no ground for this motion.

Mr Powle.] Hears an accusation of great misemployment of the revenue, and he fears he shall feel it. You are told of "two millions spent, besides the standing revenue," which is 1,500,000*l. per ann.* How shall this charge be made good, but by the Exchequer's half yearly accounts? They are *testimonium rei.* It must be spent somewhere—The great revenue of the customs [has been] wholly mispent, and other moneys spent, God knows how; and still the King's debts [are] not paid. These Exchequer books, desired to be inspected, are in officers hands, and not to be reached without the authority of this House—And 'tis a reasonable motion, to have your help to inspect them.

Mr Vaughan.] It was a bold averment to undertake this matter of the charge without seeing first the Exchequer books. If the gentlemen have seen them, let them tell you what books they have seen. If you will inspect all the books relating to the revenue, you must stay till the next session in doing it, it may be.

Sir John Mallet.] You are not now upon tryal of the Treasurer; if so, records are to be sent for, which prove things themselves better than witnesses can do. Wasting

all the revenue (as he is charged) is proper for consideration, when you come to inspect all the revenue; and to make this charge out, the whole state of the revenue must be inspected.

Sir *Charles Wheeler.*] If these gentlemen that accuse the Treasurer of this Article would go singly to the Lords Bar, to do it on their own account, they may if they please. These gentlemen have either seen the books of the Exchequer, or not. If they desire you to give leave, that they may see the books of disbursements of the revenue, &c. But those of the Chancellor of the Exchequer's office are to be seen—Commissions for Papist officers you found none, upon former search, and they were undertaken to be made out. If gentlemen would thus specify things, it would be an inducement to you to charge. If they have inspected, let them tell you the particulars.

Lord *Cavendish.*] If you please, send for the half year's books mentioned, or refer the inspection of it to a Committee.

Sir *John Knight.*] This inspection must ravel into the receipts and payments of all the revenue, and then how long time will that take up!—Sees not how in two or three months the thing can be done—Would not entertain the motion.

Sir *Robert Howard.*] If all the books of the Exchequer should be brought you, you may then be said truly to stop the Exchequer. In 3 *Charles* there was an accusation of this nature from the House, and then there was no commission to Members to inspect all the books, but only such and such—if gentlemen will specify what great, or little, sums have been misemployed, let them tell you.

Sir *George Downing.*] He will never disguise any thing here, but inform you the truth. To look over the Exchequer books to find fault, is to make the House hunt the matter of accusation. In Lord *Clarendon's* articles, the several Members undertook to make them good. What will signify the viewing the half year's account?

account? It is ravelling into the whole year's revenue, an endless work! When you have that, [you are] still in the dark, all moneys not coming into the Exchequer; and so you have no end in doing it. 'Tis said "that two millions have been spent over and above the revenue received"—There is a great difference between so much received by this Lord Treasurer, and in his time, and by his predecessor. Above half, or two thirds of it, was disposed of by Lord Clifford. Let the Gentlemen explain themselves, whether they say this Lord Treasurer has disposed of it. If the payment of it was ordered before his time, and he pay it, 'tis no crime in him, and no ground for impeachment.

Sir *Charles Harbord.*] There are two averments of a Member. Either he avers the thing of his own knowledge, and will take it upon himself to prove it, or he will produce witnesses that will prove it—Beyond these two he cannot go. The thing in question before you is, "Whether you will refer the examination of these books to a Committee." When the thing is in the House, and they possessed of it, it was never heard of to be referred to a Committee. But to inspect the books cannot be denied leave, but they ought to have done it before now. Let the Gentlemen deliver a note what thing they would see in the books; but would have you go no farther.

Sir *Thomas Clarges.*] Never was any thing yet referred to a Committee, but you were first possessed of it in the House, and when you find yourselves involved in an intricacy, then you refer it to a Committee. You have as much averment of the proofs of this Article, as in any thing of Lord *Clarendon's* impeachment.

The Speaker.] The House never refers any thing to a Committee when possessed of the whole matter, by order.

Mr Attorney *Montagu.*] If the gentlemen insist upon the book of the receipt of the whole revenue, it will take up at least three months time to inspect it; but, if you come to inspect the whole revenue, it will then be a seasonable motion.

The Speaker.] If the Gentlemen will assert any particular book that tells you where the thing is wastefully spent, you may send for it.

Lord Cavendish.] There has been 2,600,000*l.* spent, and little of it gone to the use of the navy; by consequence therefore it was wastefully spent.

Sir Richard Temple.] There has been 600,000*l.* spent for disbanding the fleet, besides 160,000*l.* for the ordnance — We may believe that money well spent. But till averment is made that this hath not been done, must be of opinion that this Article is no charge.

Sir Thomas Littleton.] You have been told of an order to inspect the Signet books, for Lord *Arlington's* commissions to Papist officers, and a foreign General. You are moved for a Committee to inspect what money has been received for secret service, and spent without account. Whether you will do it now or not, decide it by a question. The inspection desired will not require above two or three days. 'Tis not intended to inspect all the books.

Mr Secretary Williamson.] This inspection of the books is not a work so short as is proposed. You must not only look upon the foot of the account, but upon the several particulars of the sums. To ask for matter to make proof, is not for the honour of the House, and, if there be no more than he sees yet, you may throw out this article.

Sir Henry Ford.] Nothing can qualify Lord *Cavendish* for such an undertaking of these proofs, but the sight of these books. Would have him asked, "Whether he has inspected these books?" If he avers it, then the House must inspect them also. If such sums have been spent for secret service, how does that Lord know they have been mispent?

Sir Thomas Meres.] If the book must be sent for, would then see the book before he says any thing to the Article.

Mr Sacheverell.] Would have the question put, Whether you shall send for the books, or no?

Sir

Sir George Downing.] Speaks to the question of “inspecting the books.” If you send for the books, this must precede; the Gentlemen must tell you what sums of money have been mispent. It is said, “two millions above the revenue.” If this be stood to, send for the books. He doubts here is a great mistake in this. This Lord has been Treasurer two years. Of the eighteen months tax, about half of it was disposed of by Lord Clifford. If these books must be sent for, would know to what points. As to the “wasteful expence,” would have Gentlemen give you particulars of it. You may sit here upon enquiry else these twelve months. The articles do not charge the “wastefully expending the ordinary revenue,” but “those moneys over and above the ordinary revenue.” He has enquired into it, but believes your Chair can give an account of these extraordinary expences.

Mr Papillon.] Moved to send for the books; if you deny them, it will seem as if the blame [lay] on the Treasurer. Give them leave to inspect these books (the half year’s books) or 48 hours time to make out the Article.

[*Resolved,* That there is no ground of impeachment in this Article.]

On the fourth Article, “Stopping the Exchequer.”

Sir Charles Harbord.] All these stops in the Exchequer were made before this Lord Treasurer’s time; and no man is obliged to an impossibility.

Mr Vaughan.] When Parliaments have done things, they are legitimated. You run yourselves upon the greatest and most dangerous dilemma in the world, in not examining this article—Consider well what you do. The Treasurer found the Exchequer out of order, for the old debt—He is an unfortunate man, at such a time to enter upon the employment—But, if you examine not this Article, you countenance the stopping the Exchequer.

Sir Thomas Littleton.] Whilst we go about to acquit the Treasurer of this Article, would not have you give any countenance to the shutting of the Exchequer. At Christmas last this stopping of the Exchequer was made
by

by Proclamation for a time—And then a second proclamation was made, by order of the Council, and then a third, *sine die*, parallel to the second. They only differ that the second stop was done upon the Treasurer's own head, though, possibly, he might have some pocket-order for it. The difficulty is very great ; but offers some salvo ; that we do not wound the pretence of the creditors to this money ; though they cannot have their money, yet their right is undeniable—Pretended that this stopping the Exchequer was a more eligible way ; but what authority was there for it ? The stopping the Exchequer might be the reason of our prorogation—But would now have some vote, that we may not wound the property of the subject, by acquitting the Treasurer of this Article.

Mr Powle.] If there be no fault in the Lord Treasurer's stopping the Exchequer, the persons concerned are left without redress. The person first concerned in stopping the Exchequer, is gone to give an account of it in another place (*Clifford.*) In the beginning of it there was an Order of Council, and a Great Seal for it, and a war. But now comes a Treasurer upon his own authority, without the advice of the Council, and does it. The King renews his promise for payment of the creditors, on the first of *May*—And as to the stop, no collateral warrant for it. If the Treasurer had made a right representation of the thing to the King, the prorogation of the Parliament, probably, had not followed thereupon. This and the other were the ill consequences.

Sir Richard Temple.] This Lord Treasurer has paid the interest to the creditors, and, as much as in him lies, has endeavoured to rectify the errors of his predecessor. In this question of clearing the Treasurer of this Article, you do not, in the least measure, share the interest of the bankers.

Sir Charles Harbord.] The Lord Treasurer that is dead complained of the shutting up the Exchequer as a hard and unjust thing—Says he, “ I'll keep them in hopes ;” which occasioned the second Great Seal and Proclamation—But he forewarned him not to delude the people, as dan-

dangerous—He believes that this Lord intends to pay the King's debts, as he believes he intends to pay his own.

Col. *Birch.*] Fears that your silence has occasioned this business of the shutting the Exchequer. The Treasurer's fault is not "shutting the Exchequer," but "not opening it," and we sitting silent and taking no notice of it.—And now to the impeachment of the Treasurer upon this Article—Would have the question "No matter of impeaching him, but that the shutting up the Exchequer is a grievance."

Sir *Lancelot Lake.*] This morning, in one of the Articles, the Exchequer was sick of a flux; and now, at this time of the day, it has an obstruction—Here we have need of the physic-book, given us at the door to day.

[*Resolved,* That there is no ground of Impeachment in this Article.]

On the fifth Article, "Assuming to his management the *Irish Affairs.*"

Mr *Wm Harbord**.] Is much surprized at this Article, and much more that Sir *John Coventry* should name him to prove it, for he knows nothing of it.

Mr *Sec. Coventry.*] He has written and countersigned letters for the *Irish affairs*, ever since Lord *Arlington* was made Lord Chamberlain, as that Lord used to do.

Sir *Edward Dering.*] The supreme management of the Treasury of *Ireland* is under the Lord Treasurer's management, as well as appeals are from thence to the King's Bench, in *England*.

Sir *Thomas Littleton.*] Desires that the Speaker would ask the Secretary one question, "Whether he countersigned as in Lord *Arlington's* time, but whether, in other respects, there was any great variation."

Mr *Sec. Williamson.*] No more than the ebbing and flowing of one office upon another, under one master. From King *James's* to King *Charles's* time, the Secretaries did more or less in the *Irish affairs*, as they had direction. The revenue of *Ireland* is the King's domestic af-

* Son of Sir *Charles*.

fair, and has its superior direction from the Lord Treasurer of *England*; this, and all other things, go promiscuously as in the hands of his predecessors.

Sir Tho. Littleton.] Would know, Whether [there is] not a more private and secret management of these affairs than before his time, by pretermission of the Signet Office?

[*Resolved,* That there is no ground of impeachment in this Article.]

[On the sixth Article. [“ Procuring great gifts and grants from the Crown.”]]

Lord Obrien.] As he is obliged to assist his fellow subject, so he is obliged to detect the management of affairs which come to his knowledge. A year since this Lord Treasurer had 1200*l. per ann.* granted him to his particular use, part of the King’s ancient revenue; and 12000*l.* from the King, placed upon the duty of Excise. The Lords of the Council of the House can give account of this, if they please; if not the Council books will make it appear, and offers it as a proof of this article.

Sir Charles Wheeler.] The Lord Treasurer paid *Lindsey*, the Goldsmith, 10,000*l.* for the payment of these fee farm rents, and afterwards, a proposition being made to the Treasurer, about the marriage of Lord *Latimer* to the Lady he has now married, this money was laid out within 200*l.* of 10,000*l.* for these fee farm rents, for a settlement upon that marriage—But it may be objected, that there is an interest of the Queen’s in them, for her life, in case she outlive the King.

Mr William Harbord.] He is a Commissioner for the fee farm rents—*Lindsey*, the Goldsmith, had a great debt owing him from the King, and so had the city. Sir *John Duncombe*, and the Lord Treasurer, agreed with *Lindsey*, that if he would pay the city debt, he should have out of the Exchequer to pay his own debt and that too—Some fee farm rents were contiguous to the Lord Treasurer’s estate, who treated for them, and gave eight years value, and afterwards paid for them, that he might have

have the present possession of them ; upon which the Queen's jointure was released, and placed elsewhere.

Lord Obrien.] The Treasurer has not only 1200*l.* per Ann. of the Queen's, but here is 2000*l.* out of the Excise, for the Queen's life.

Mr Wm Harbord.] Appeals to any man, conversant in the Treasury, whether ever the King gave less to any Treasurer than this Lord Treasurer ?

Lord Obrien.] He finds now that 12,000*l.* is a light matter to be given away. Your predecessors have taken notice of less matters than these. Lord Latimer's case, in 50 Edw. III. Judgment was given against him for divers grants, to the King's loss—He was judged to fine, ransom, and imprisonment, during the King's pleasure. 12 R. II. Michael de la Pole for moneys (of the King's) embezzled, against his oath, was judged to have all his lands seized into the King's hands, and he had nothing left him but 20*l.* per ann. and his Earldom.

Mr Powle.] The gains are great as Lord Treasurer, and yet he must take the King's revenue to himself—Said “A gift and not a purchase”—1200*l.* a year at least, bought under 10,000*l.*—The King must be deceived in his grant, and Lord Obrien has reason to accuse him of corruption—1200*l.* per ann. is one of the articles of the late Duke of Buckingham's charge, that he had obtained by a grant from the Crown, who brought up first the most expensive way of living.

Sir Charles Wheeler.] Is sometimes at the Lord Treasurer's, and sees his chargeable way of living, and 'tis for the King's honour. We sometimes admire the great way of living of foreign great officers of state, and four or five thousand pound, in a bargain, is no great gift to him. Do you consider nothing but the bare gift ? His father * was sequestered, and sold one thousand pound per ann. upon account of his loyalty ; and this Lord Treasurer is 10,000*l.* the worse, and is this gift so

* Sir Edward Osborne, Bart. Vice-President of the Council to King Charles I. for the north of England, and Lieutenant-General of the forces, ruined for his gallant defence of that part of the country, in 1641.

great

great a matter? Is there no consideration of his Lady, whose Grandfather † lost his life for the late King's interest, and the late Lord *Lindsey* his son, who bestrid his father when he was hurt, and fought with a pike in his hand to get him quarter? And when an army has been paid off, and a navy that rebelled, and neither his father nor he have had one shilling recompence—reckon this sum which the Lord Treasurer has received with all this, and put the question, “Whether he is impeachable by this article.”

Sir *Thomas Littleton.*] This change of the Queen's revenue was done against the consent of the Queen's Council, and she has these lands taken from her, and turned to a bare pension out of the Excise.

Sir *Nicholas Carew.*] 'Tis said—“This was given the Treasurer as a reward for his sufferings”—He will willingly give his consent to it, if he may have his *600l. per ann.* that he has sold upon the account of his sequestration; and he stood sequestered at the King's coming in.

[*Resolved,* That there is no ground of impeachment in this Article.]

On the seventh Article, of “A new Proclamation better than an old Law;” and “Banishing the foreigner.”

Sir *Thomas Littleton.*] The gentleman (*Salter*) that will not appear, is to give evidence to this Article. One *Otto*, a *Hamburgher*, who, by the King's Proclamation, was not to trade to *Hamburgh*, unlesf of the *Hamburgb* Company, being a *Hamburgher*, thought he might do it; whereupon there was a warrant from the Admiralty to seize all his goods. The Treasurer, hearing the cause, made this reply, “That a new Proclamation was as good as an old Law.” The foreigner subscribed that he heard him say the words.

Mr *Powle.*] In the Serjeant's room without the Lobby, they set their hands that they heard the Lord Treasurer say these words—And when *Otto* was banished, as soon as the sentence was passed upon him at the Council,

† *Robert, Earl of Lindsey*, killed commanded the King's army in at the battle of *Edgehill*, where he 1641.

the Treasurer said to *Otto*, over the table, “I told you what would come of it.”

Sir *Lionel Jenkins.*] The warrant was out of the Admiralty—This *Otto* was a foreigner, and had shipped some goods from *Hamburgb*. The warrant was to arrest the goods, and they were arrested. His Counsel were heard, both of the Civil and Canon Law. By the Patent of the *Hamburgb* Company, it appears plainly, that he, being not of the Company, could not trade to *Hamburgb*, and his goods were thereupon decreed to be contraband goods. He remembers no statute urged by the Counsel against the Proclamation. The issue of the matter was that the goods were landed; and *Otto* arrested this officer in an action of five thousand pound; the Proclamation commanding the Admiralty to be assistant in such cases; but he remembers nothing of law urged by the Counsel against the Proclamation.

Mr *Sawyer.*] Remembers not one statute quoted at this cause; Mr *Offley*, *Otto*'s Counsel, only said, “We suppose we have brought an action in a legal way for the goods, and hopes your Lordship will not stop it.” “I find it matter of state,” said the Treasurer, “and shall report it to the Council.” *Offley* did insist that they could not stop matters of law; but the Lords gave a rule that he must depart the Kingdom in so many days, it being insisted upon as a breach of the league with *Hamburgb*, and there was no way but to remand the foreigner to be proceeded against in his own country.

Sir *Edward Dering.*] Circumstances may make us believe, or not believe, a thing. In the Treasury-Chamber, the *Bermudas* Company sued as the *Hamburgb* did now, for duty for goods brought that way. The Lord Treasurer's favour was implored for the King's prerogative. The Treasurer answered, “He would rather hazard the loss of one of the King's islands, than break one of his laws.”

Sir *Thomas Meres.*] When the evidence that should prove an article, fly out of the way, you lose your inducement to find it.

[*Resolved*, That there is no ground of impeachment in this Article.*]

Sir *Joseph Tredenham* made mention of Lord *Shaftesbury's* letter to Lord *Carlisle* about the dissolving this Parliament, but there were no farther proceedings in it.

Tuesday, May 4.

Sir *Thomas Littleton*.] Finds it reported that one *Salter* was promised four thousand pound by him to set his hand to the information offered you, "That the Lord Treasurer should say, 'That a new Proclamation was better than an old Law'"—Desires that such reports may not be spread of him, but that what persons have to say they would do it avowedly.

Sir *Joseph Tredenham*.] Desires that *Salter* may be called to the Bar, and that your Member may have justice done him in this matter.

Sir *Thomas Meres*.] If nobody says that *Salter* did say words, you give yourselves an idle trouble in the matter.

The Speaker.] If *Littleton* will declare who heard *Salter* say the words, then you may send for him.

Sir *Nicholas Carew*.] The Member at the Bar (*Tredenham*) speaks suspiciously, as if he heard of it seemingly from good hands.

Sir *Joseph Tredenham*.] The thing has been talked of about the House, and what he offered was in vindication of your Member.

Salter not being to be found, and another *Salter* at the door, not the same person, he was not called in.

Debate on the navy business.

Mr *Garroway*.] Shall always be as ready and well satisfied to do any thing for the honour and safety of the

* Whether the charge against the Lord Treasurer was held frivolous or malicious, whether sufficient proof was wanting to make it good, or whether he had more friends in the House than his Royal Master, on examining the foundation, the whole building fell to the ground.

It must be owned our lights fail us in this matter. Bp. *Burnet* contents himself with saying, "The majority were for him." *Marvell* is express, "That he got off by high bribing." Nothing is easier to be said, nothing is harder to be proved. *Ralph*.

nation as any man. There is a revenue already settled to keep up the Navy. If there be a war in prospect, let us know it. These are things to be considered before we go into the consideration of the Navy—Would know plainly how we stand with *France*, whether we are like to have an answer from the King about the withdrawing the *English, &c.* from thence. If we are safe and free, he will offer his thoughts one way; if not, another way—Would debate that first, before we can be ripe for a Debate of this matter.

Sir *Nicholas Carew.*] It appears dreadful to him that the *French* have more ships than we—Therefore moves that we may build some ships to be in a capacity to defend ourselves—He means not against *Holland* and *France* both together—But would have so much of the Customs set apart for so many years, (if the King shall live so long) for building so many ships as shall be a defence to us.

Sir *Thomas Clarges.*] It is not our part to look into treaties of war and peace—But we cannot be ripe for this motion till we have inspected the revenue, that in the interim we be not swallowed up in an abyss. He has seen, in the year 1638, an establishment of the revenue, where, by great circumspection, it has been calculated at 640,000*l. per ann.* which it exceeded not. 'Tis now 1,400,000*l. per ann.* some say—But the least 1,300,000*l.* If so, there may be very well some of it set apart for Crown-debts—At least some for the fleet—And moves for a Committee to consider of the state of the revenue.

Sir *Thomas Littleton.*] This motion interferes not with that above—Be the state of the revenue well or ill, let it be done, and seconds the motion of appropriating the Customs to the use of the Navy—He means not that part of the Customs arising by the new imposition upon wines. The other part of them is 450,000*l. per ann.* That of wines, for these remaining three years, that the imposition lasts, will make 750,000*l.* This, in all probability, will repair the ships, and fill the stores, it being known to be first given for this purpose—And would have a Committee

mittee for a Bill for the appropriation of the Customs to the use of the Navy.

Mr Sec. Coventry.] 'Tis not usual for this House to inspect the King's Treasury. This motion of appropriating the Customs for such a time to the use of the Navy, is, as if, before you can spare it, you will spare it. If this revenue be so engaged, and that of the Customs assigned, your appropriating them to the use of the Navy stops all other payments. The payments are rather taken off from the Excise, and placed on the Customs. Before you come to that vote, pray consider it; and see what debts are upon the Customs before you appropriate them.

Mr Pepys.] Is not very conversant in matters of the revenue, but should be ashamed not to know what revenue relates to the Navy. It is valued at 450,400*l. per ann.* He shall show, when you require it, That the King has actually laid out 400,000*l. per ann.* upon the Navy—This very year, in three or four articles, the King must spend 450,000*l.*

Sir William Hickman.] Would know whether this was for the ordinary charge of the Navy, or in time of war—Therefore he closes with those who move for the assignment of proportions, for the future, out of the Customs, for the Navy, and would farther know how the Customs have been already assigned.

Mr Pepys.] Assures that, one year with another, in the Lords Commissioners of the Treasury's time, 400,000*l. per ann.* has been assigned.

Mr Sacheverell.] Would know whether this was the annual charge over and above the repairs of the Navy, after the war, for money was given particularly for that purpose.

Mr Garroway.] Will say nothing of what is past. The office of the Ordnance is not reckoned into this—Before you can make any judgment in this matter, you must say, so many ships will stand you in so much in time of peace, and how many ships; and reckoning 4*l. a head*

head *per month* will maintain 6000 men for six months, would have it thought of before any judgment be given.

Mr. *Pepys.*] 'Tis impossible to answer that, but 400,000*l. per ann.* he affirms has been spent upon the Navy—Does not believe any man thinks that he can carry the account of the Navy in his head. This he only says, the sum has been actually delivered to the Treasurer of the Navy for the account of the Navy. The standing permanent charge on the Navy, if no ship at sea, the constant charge, summer and winter guard, is 100,000*l. per ann.*—But has the King done nothing else? He has built eighty-seven new ships, great and small, and, because he will lay no great weight upon the little word "small," the King has built more ships than all his ancestors before him.

Col. *Birch.*] Because he understands not this matter so well as he would, desires better information—Would know only when money is well and when ill spent—Could have wished the King would have taken so much pains as to have inspected the money as well as the ships—But would know how you have been dealt with. He has taken it for granted that 4*l. per head* is to be allowed the Navy, and out of this he shuts not the Ordnance nor any thing else—So many ships shall be victualled and delivered; shoot what you will in powder, except healths, (a thing not so much in use formerly as now.) And the ships delivered back again, the yards paid, and all charges from the Admiral to the swabber, for three pounds ten shillings a head *per month*: If the King must know his condition, he must begin from the time he came in. Ships might have been built of gold at these rates the Navy has cost—He admires to hear "that 400,000*l. per ann.* has been spent upon the Navy." Suppose 30,000 men in the fleet, every man may make up the account, at three pound ten shillings *per head*, as well as *Pepys*—Formerly, if the charge came to above three pound nineteen shillings and sixpence, the Officers were soundly chidden for their pains—Every officer, wear and tear, and the yards discharged for this sum, or else the

King is ill used. When the sum of the charge is spoken of, then let us know how many thousand men, winter and summer guard, and how many ships, and every man with his pen may make up the account.

Mr Pepys.] The King has now a better fleet than ever *Birch* knew in *England*. He speaks of three pound fifteen shillings, as a *medium*. Let him show but one ship in the late times, or the late King's time, that cost no more, and he submits. If all, in the late times, was done at 3*l.* 15*s.* a head, how came there a debt upon the navy of 700,000*l.* when the King came in? How came the King to be forced to rebuild so many ships —? Suffer not yourselves to be led by any man's general assertions more than his; he hopes you will not. He does value himself upon industriously serving his master, and balks no way of tryal, but will abide any examination of yours.

Col. Birch.] Here is something, it seems, offered by way of question. Every gentleman knows that, when the birth draws near, throws grow thick. When the King was coming in the government, things rotted and were in disorder in the Navy. *Pepys* seems to say, it cost the King no more than 4*l.* per head. He will not differ with him for 10*s.* or 5*s.* and by his account would see how 400,000*l.* has been annually spent.

Mr Pepys.] You are told that these debts were contracted by the unquietness of the government, soon before the King came in, from the quick-sightedness of the persons that managed affairs. It seems they were so four or five years before the King came in, and from that time can show the debt was contracted.

Sir Thomas Meres.] He sat in *Richard's* Parliament — 'Tis true that, in the varieties of the Government, there was a total neglect of affairs; and that it was not worse when the King came in, was a wonder. Whether the money yearly spent, be 2, 3, or 400,000*l.* it does but forward the question to appropriate the Customs to the use of the Navy, by Bill. Then 'tis a security to us that there is a fund for the Navy for three years. Then let the

gen.

gentlemen that manage the Navy, apply this money as cheap as they can—Sees no man deny but that the Navy needs it—Let us have that foundation; therefore pray put the question.

Mr *Sacheverell.*] Would first see how the Customs will do without the people's help, and then would make an estimate, as is proposed.

Sir *Robert Howard.*] If now you intend to do what you say, 'tis impossible the King should live. The Speaker knows that 6000l. a week is now paid to the Navy—'Tis told you by all, that the King has done what he can for this purpose out of the Customs. Examine what you will first, and then you may draw a conclusion from every one of the premisses. He rises not up to tell you otherwise than how things are—Examine necessaries, and you will not find such an exorbitant balance as you imagine, and the King, he believes, will be as willing to do it as you to vote it.

Mr *Harwood.*] If we are in necessity, he shall only repeat what he said a great while ago: "How came we into this necessity?" The service here is for the King and the people, and he will never separate them here—Should he be more for the one than the other, he did not his duty. But, as to this matter, he knows not possibly how to satisfy those that sent us hither, or the King, unless we see where the fault lies after most of the money was given by this House—Till then you will never know where to mend it—Moves as well to look into the money already spent, as to provide for the future.

Sir *Robert Howard.*] Is willing to have his actions searched in any thing, though *Harwood* himself was the inquisitor.

Sir *John Ernly.*] Believes Mr *Harwood* not here when the state of the Navy was stated—But you have not yet heard of any thing of money desired. If you think the Navy in a good condition, there is no more to be laid—that you may have all the clearness before you, he should be an unworthy officer of the Navy if he desired not an appropriation of something for it; but if you do as is

moved, about the Customs, postponing must be of necessary consequence again.

[Sir William Coventry.] The method you have been informed of; but a great part of the House are strangers to it. The method requires that a Committee may be for their farther information—Believes that the managers of the Navy can inform you that, if an appropriation had been, much of the money spent might have been saved. Some tell you “that leave must be had from the King before you inspect the revenue.” He supposes the House would not appropriate more than may well be spared—Would refer the thing to a Committee to propose and ripen the matter for you, and have the King’s leave asked to inspect the revenue.

Resolved, That a Bill be brought in to appropriate that part of the Revenue which arises by the Act of tonnage and poundage, passed the 12th year of his Majesty’s reign, to the use of the Navy, for 3 years, if the duties granted by that Act shall so long continue.

Wednesday, May 5.

The abovementioned *Salter*, was, by order, brought to the Bar, and being interrogated by the Speaker, denied “The proffer of 4000*l.* from any member, and that he said any such words, nor did any person apply to him to give any testimony against the Lord Treasurer, nor give him any promises to do so.”

Then *Nead*, the Quaker, at the Bar said, “Some members came to his shop, and asked him if he knew *Thomas Salter*, and enquiring concerning the words of the Lord Treasurer, about the proclamation which *Salter* should report, *Salter* told him, “He said no such words.” The members did desire to speak with *Salter*, who told them, “He had nothing to say against the Treasurer, but was troubled he had set his hand to a paper, and desired to see it,” but could not—*Thomas Otto* was banished, he thought it a hard case, and his Counsel said “it was against law”—The members that came to his shop were *Thomas Papillon* and *Josiah Child*. Then he produced a letter from *Thomas Salter*, “He believes it is his hand as well as his own—He has paid him a great deal of money.”—Then he directed his speech to the House, “To consider in the fear of the Lord, those that suffer for conscience-sake,” but was silenced presently—Then the letter was produced, wherein *Salter* says, “That Sir *Thomas Littleton*, and Mr *Powle*, discoursed with him about the Treasurer, and about

the

the banishment of *Otto*, who urged him to set his hand to a paper, upon which *Littleton* wrote, and upon *Littleton's* importunity, he set his hand to he knew not what, which he was sorry for."—*Salter* then owned the letter.*

Mr Powle.] He sees his name mentioned amongst others, therefore he thinks it his duty to acquaint you with all he knows in the matter. The first time he saw *Salter* was in *Westminster-Hall*, where he discoursed about the Lord Treasurer's proceedings against *Otto*. *Salter* then said, "There were some words spoken by another great officer, but was not sure whether by the Lord Treasurer or no, and if he were at home, he could speak more particularly by his notes." They went afterwards with him to *Heavent*, and then he perfectly remembered it was the Treasurer—said in the Treasury chamber, and reported by the Treasurer to the Council, who, over the table told him, "I told you what it would come to," *Magna Charta nisi publice prohibit, &c.*—*Littleton* said, "If this be put into execution, *Otto* may be called again." In the serjeant's lobby *Salter* repeated the words again, and *Otto* and *Salter* set their hands to the paper freely and voluntarily, and, upon this, he thought it a thing fit to bring before the House.

Sir Thomas Littleton.] *Salter* said "he remembered the words, but thought them said by another great officer," but, upon recollecting himself, remembered them said by the Treasurer, and in the Treasury chamber, on rectification of his error, upon recollection. *Mr Papillon* took his words from him in the presence of five Members, and with the *German*, *Otto*, along with him, present at the words, and from them he wrote the words and read them to them, and never saw men more willing to do it.

Sir Edward Dering.] Has seen that here which he never saw before. The Lords have sent us three Bills, and we have sent them never a one yet. Would have the Bill of Popery read.

Sir Eliab Harvey.] Yesterday we had the fleet under consideration. We have likewise had an Address to the

* There is no mention of this in the Journal. † Sic M.S.

King for recall of the King's subjects in the service of the *French*—Moves that we may again address the King for an answer.

Mr Sacheverell.] We are not safe in religion whilst we have so many *English* in that nation—Moves that they may be recalled by Proclamation, and hopes we may have something else with a sting in the tail.

Sir Thomas Meres.] We moved it at the first, with hopes that, by this time, the King would have done it by Proclamation—And now moves for an Address that they may be recalled from that King's service by Proclamation.

Sir Thomas Lee.] Has been told, that the Duke of *Monmouth* has lately sealed several commissions to officers for raising men for the *French* service; therefore it is high time to address the King for a Proclamation.

Mr Love reads a letter from *Dieppe*, which informs him, “that many *English* are gone into *France*, in a fly-boat, which a *French* man of war convoyed.”

Colonel Birch.] We swallow down the *French* customs with their debaucheries—Would give reasons for this vote, were we in a condition at present to do it.

Mr Garroway.] There is nothing in the league to forbid men going into *Holland*, but expressly there is against going into *France*—Therefore there is no danger of their going into *Holland*.

[*Resolved*, That an Address be presented to his Majesty that he would be pleased to issue forth his Proclamation for the speedy recalling those his subjects that are now in the service of the *French* King, and for the preventing any more from going over into that service.

[*Resolved*, That a farther Address be presented to his Majesty concerning the Duke of *Lauderdale*; (the question for adjourning being carried in the negative,) 119 to 99.

A Message was this day sent to the Lords, concerning a petition of appeal depending before them, at the suit of *Tho. Shirley*, Esq; against Sir *John Fagg*, a Member of this House, to which petition he was, by order of the House of Lords, directed to answer on Friday, ‘desiring them to have regard to the privilege of this House.’]

Thursday,

Thursday, May 6.

[An engrossed Bill to prevent illegal imprisonment of the subject, was read.]

[Debate.]

Mr Secretary Coventry.] Would have the Long Robe declare their opinion, Whether the Lord Chief Justice may send a *Habeas Corpus* without hearing the cause?

Mr Sacheverell.] By law, no man can be sent out of *England*, but for a fact he cannot be tried for in *England*—And if he cannot be sent away without an offence, it ought to be clear there is an offence. It leaves the subject in the same state he was before, not to be transported without an offence committed.

Mr Secretary Coventry.] Is there any law whereby a man may be tried twice for one offence?

Serjeant Crook.] Treason committed in *Scotland* is not tryable here—But treason committed in *Ireland* may be tried here—Robberies cannot. 'Tis a rule in law, that laws are made for things which most frequently happen—The King's writs extend to *Calais*, *Guernsey*, and *Jersey*—But persons, 'tis said, may be sent to remoter parts. An information of treason, by *Habeas Corpus*, may be sent into *Scotland* and *Ireland*—This bill may be done without prejudice to the King's evidence and prerogative, and with great safety to the subject.

Serjeant Hardres.] Matters of treason, committed here, will be tryable here. *Lord Sanquire's case**.

[The Bill passed.]

On a motion to adjourn the Debate of Dr Burnet's information, a petition was presented by Sir John Morton, from one Robert Murray, who, by the illegal procurement of the Duke of Lauderdale, lay in irons six months, in the *Gatehouse*, but got his *Habeas Corpus*, and then was turned out of prison.†

Earl of Ancram.] The petition tells you “of irons,” but were he in *Scotland*, he would have a piece of iron through his head. He is the greatest Sectary in all

* A Scotch Peer, hanged in *England* for murdering a Fencing-Master, 24 James. Rapin.

† Murray was called in, and owned the petition at the bar.

Scotland,

Scotland, though he is here in another habit—The fame of him is not to be mentioned in this assembly.

Mr Dalnaboy.] He dispersed seditious books in *Scotland*, and is very turbulent.

Sir Thomas Lee.] This *Murray* seems to be a very young man, and he begins very early to be a covenanter. The offence, it seems, was done in *Scotland*, and he was imprisoned here in irons, and turned out of prison, no man knows why. Let him be committed according to the law of *England*, and not put in irons here for keeping conventicles in *Scotland*.

[The petition was referred to the Committee of Grievances.] Complaint was also made of one *Browne*, committed to the Tower*.

Mr Secretary Coventry.] If you will grant that one of that country may be tried here, he may be to-morrow. If going into the enemy's army, and corresponding with the King's enemies, be not a crime, he leaves it to your consideration.

Sir Henry Ford.] If spreading seditious papers out of *Scotland* be not a cause for his commitment, he knows not what is.

Mr Vaughan.] If spreading seditious pamphlets was a cause of turning him out, it was as great an offence as the committing him.

[The question being put, Whether the House will proceed in the farther consideration of the business touching the Duke of *Lauderdale*; it passed in the negative, 146 to 132.]

Friday, May 7.

A Message from the Lords: “*Mr Speaker, The Lords have considered of the Message [received] from the House of Commons, concerning privilege, in the case of Sir John Fagg, and do return this answer: That the House of Commons need not doubt, but [that] the Lords will have a regard to the privilege of the House of Commons, as they have of their own.*”

* There is no mention of this in the Journal.

Mr Secretary Williamson.] Was commanded to attend the King by you *; and he has sent you this Answer:

“ His Majesty has considered [of] the Address against the Duke of Lauderdale, and the reasons accompanying it. As to the Acts of Parliament mentioned to have been passed in Scotland, his Majesty observes, that the first of those Acts was in the year 1663, which was long before the Duke of Lauderdale was [his Majesty’s] Commissioner in that Kingdom: The latter was in pursuance of the former. As to the [words, by the] time of [Mr] Penystone Whaley’s case, his Majesty perceives, that, if they had been spoken, they must have been spoken before the last Act of general pardon; and his Majesty, being sensible how great a satisfaction and security the inviolable preservation of the former Act of indemnity and oblivion has been to all his subjects, cannot but apprehend the dangerous consequences of enquiring into any thing that has been pardoned by an Act of general pardon, lest the example of that might give men cause to fear their security under the first Act of Oblivion.” Given at the Court at Whitehall, the 7th day of May 1675. C. R.

[Debate on his Majesty’s Answer.]

Mr Vaughan.] Many persons have been pardoned, that yet are of so ill morals, as not fit to be either Justices of the Peace, or in any other office; and a man of so ill principles as the Duke of Lauderdale, no Act of pardon can purge, so as to be capable of any office of trust.

Sir Charles Wheeler.] If we come to examine principles, it will go a great way in the Act of Indemnity.—Would join issue upon that, whether, since that Act, persons have so changed their principles as to be capable of offices of trust; and therefore there is great danger in enquiring into the principles of persons.

Mr Vaughan.] Why made we the laws against fanatics, if a suspicion upon non-conformists had been wholly wiped away by the Act of Indemnity?

* This was to know his Majesty’s pleasure, when he would be attended with a farther Address concerning the Duke of Lauderdale; but before he received the Order of the

House to know his Majesty’s pleasure, his Majesty had given directions for the above Answer to the first Address.

Sir

Sir Robert Holt.] In this would begin with your own House in principles—There was an order of the House, that persons should be suspended sitting here, that received not the Sacrament, according to the church of England ; and they have not.—(*Some cried, Name them then.*)—*He said,* He must do it by order of the House, and then can.

Mr Powle.] We only declared an opinion of the unfitness of this Duke's serving the King. The thing has been done in all times, and may be now. Suppose a gentleman gives a pardon to all his servants, and afterwards his steward is found faulty in his accounts ; would he not sue him at law, if he gave him no satisfaction ? You intend no prosecution of the Duke, but only removal out of employment, as a man so principled, as not fit to be trusted with the Government. When the Act of Oblivion passed (this is but a pardon) yet the Act of regulating Corporations gave power to look back into misdemeanors. Persons, upon enquiry, were not fit to be trusted in Corporations ; much less in the Government, as the Duke of *Lauderdale* is. He fears some heaviness upon the hearts of the King's subjects for not granting this request. He wishes the King faithfully served ; and he may express his fears, that subjects will not go on so chearfully in the promotion of his service, without removal of the Duke of *Lauderdale*. 'Tis true, the Scotch law about the Militia was made under Lord *Rothes*, but 'twas when the Duke of *Lauderdale* was Secretary, who managed all affairs in *Scotland*—That Act is a breach of those hostile laws made in the 4th of King *James*, and a repeal of those laws. Would have the King moved, that these laws about the Militia of *Scotland*, may be repealed in *Scotland*, occasioning the jealousies that may arise thereupon.

Mr Sachevereli.] He finds no motion made yet. Will just make you one.—He knows not why this House should proceed any further, you having no answer yet from the King, for removal of such a person. 'Tis but in vain to make any laws. Would address the King for a farther

a farther Answer; and would adjourn the House till we have it.

Sir *Lionel Jenkins.*] The King says, “ Those laws were not passed in *Scotland* in the Duke of *Lauderdale's* time;” and therefore suggests him not to blame. This Address differs from the very words of *Magna Charta*—“ To be removed from the King, without legal proceedings against him.” —’Tis not only a punishment, but destruction to him, *Neque destruatur nisi per judicium parium suorum*, &c. Any man divested of his place, without course of law, ’tis a destruction to. Any man accused of felony, and his land begged in case of conviction, Lord *Coke* says, is contrary to *Magna Charta*—*Neque destruatur aliquo modo*, whilst not convicted. A man to be impeached regularly, is no destruction; but to have a man’s honour and dignity thus arbitrarily taken away, he appeals whether ’tis not against law.—And is of opinion, that the King has given a satisfactory Answer to the Address.

Sir *Henry Ford.*] Is against leaving off old ways, and taking new ones. By impeachment, there is no need of an Address; for that now seems to press the prerogative. He fears this is not the way to get a good understanding betwixt the King and us.—It looks like jealousy. He is a good and gracious King; and would not be multiplying one Address upon the head of another. It seems like making provision under the best Prince, as if we had the worst. How many hundreds have been pardoned, and are in great places, by the Indemnity!—Would rest satisfied with the King’s Answer.

Sir *Robert Thomas.*] The King’s Answer is, “ The Duke of *Lauderdale* is pardoned by the Act.”—But ’tis not the crime we go upon, but his dangerous principles.—Would have another Address upon that account.

Sir *William Hickman.*] Hears nothing of taking away a man’s freehold in the case.—What other way have you to reach a man of such principles?—Desires you would declare the answer not satisfactory.

Sir *Lionel Jenkins.*] Sending Judges into *Ireland*, to serve the King there, is against that paragraph of *Magna Charta*.
Sir

Sir Eliab Harvey.] Would not have a pension of 3000*l.* a year out of the Customs, to the Duke of Lauderdale, be a freehold, to maintain a man of such principles.

Sir Robert Howard.] That branch of *Magna Charta* is the most mistaken that can be, and Jenkins's argument wholly against the King.—That branch of *Magna Charta* is wholly on freehold, which no-body here contends for.—Only removal.—This will make all things during pleasure under *Magna Charta*.—There is no proper tryal for grants taken away, during pleasure, because there is no freehold in the case. But, in this case, to come to so harsh a vote, as, “that the King's Answer is not satisfactory,” 'tis too sudden; [and would take another day to consider of Reasons, the King having given you some. He will not argue about the putting away a servant; will not argue against the sense of the House; but would return an Answer to the King with Reasons.

Mr Garroway.] Would proceed in all things tenderly with the King, and would in this. You have no satisfactory Answer from the King, but one chopped in—Would vote, “That this Answer gives us no satisfaction;” and would take another day to consider farther of it.

Sir Edmund Wyndham, Knight Marshal.] Took exceptions at the words, “chopped in;” to which

Mr Garroway said] He uses no set speeches; and a word may suddenly slip a man.

Mr Harwood.] If we can remove this Lord, we do great service to the King. If these reasons, for his removal, were not satisfactory to all here, why did you send them? He fears you can give no better. He is always circumspect what to say, when the King comes into his mouth. We are not to be guided by those that are about the King, that tell him these are not reasons, which he is sure will justify you in what you say.

Col. Titus.] He shall say nothing of the merits of this Lord; he knows his own opinion of him, and believes a great many else do. But to the vote proposed, would not pass it, “not satisfactory;” could he divine what

Answer.

Answer the King would give, he would be for the Vote. Possibly your second Address may have a prevalency that the first had not, and would stay for it.

Mr Stockdale.] He cannot expect a more satisfactory Answer from the second Address, we having given all the reasons we can. You said you were not satisfied in the Answer to the Address concerning *Ireland*; and you may as well say so in this now.

Mr Sawyer.] In this case, let us use the King as he has used us. 'Tis agreeable to the temper of this House, to consider of the King's reasons, and to take some time for it.

Mr Sacheverell.] Hears nothing now in the King's Answer, but what reasons you knew before; the King neither grants your requests, nor answers your reasons, by the paper.

Col. Birch.] The former Address was without reasons. The Address itself spoke your desires. You thought fit to lay aside reasons in your Address about *France*. He confesses himself one of those who was sorely gotten on the wrong side; and the King has given him, or graciously confirmed him in his place *. He is pleased to see persons stick so close to the Act of Indemnity, and he hopes they will not forget it when on another occasion.—The King's temper so good, how close he has stuck to it you know. The Act of purging the Corporations made a breach upon the Indemnity.—The King, out of his accustomed goodness, says so still, “That 'tis against the Act of Grace.”—Would have the Reasons read, to see if that be the main Reason.—Whether a person, so in the ill opinion of the Commons, should have a pension out of your devoted money, the Customs. It was once debated, whether the House should have the nomination of the King's Council. 'Twas then said, “No, by no means; 'tis a high point. But if the King have any person there against the good-will of the people, he may be removed by Address.”—Would not now put the question “fatisfactory, or not satisf-

* Auditor of the Excise.

factory.”

factory"—Hopes, that by adjourning the present Debate, you may attain your end.

Mr Sacheverell.] One thing occurs to him in the King's Answer—*Williamson* says, "This Message was delivered THEM last night," and the Message bears date this day—Would know who of the Council draws this Answer besides the Secretaries? You thought not fit a man of his principles, so declared, should be longer continued in office, but of that we have no Answer.

Mr Secretary Williamson.] The King signed the Answer this morning, but it was sent to him in writing the last night, and put in the third person to draw this Message by.

Mr Secretary Coventry.] General pardon excuses particular punishments, and whether being turned out of all offices and employments be not a punishment? The case of a master that has pardoned his servant, and for the same offence to turn him away a month after.

[The Debate was adjourned till *Tuesday*.]

Mr Secretary Coventry.] The King has appointed the House to attend him this day in the Banqueting-house, at three o'clock in the afternoon, with their Address for recalling his subjects out of the French King's service.

[The Address was accordingly presented in the afternoon.]

Saturday, May 8.

Sir Thomas Littleton.] Moves to enquire into the Lords proceedings in the appeal brought against Sir John Fagg, by Dr Thomas Shirley, and that some Members be ordered to search the Lords Journal for your better information.

Mr Garroway.] The Lords Message, you may remember, was "they would be as careful of your privileges as their own," and at the same time they enter into their Journal, "that you have no privilege in this case of appeals." This is a glorious pretence to give freedom of appeals against their own Members as well as yours—Would have some Members search their Journal, and an order made, that your Member, Sir John Fagg, shall make

make no answer to the appeal, and to reprove him if he has already done it.

Sir *Thomas Clarges.*] Before there be any determination here of the thing, would have a conference with the Lords about their order for *Fagg* to appear. Their court is *dernier resort*, and there can be no appeals brought, but in time of Parliament, and their orders remain to be executed out of Parliament—Would have the Lords books viewed by some Members.

Sir *Samuel Barnardiston.*] Before you make any reflection on your Member (*Fagg*) let your own books be inspected, and enquire if an appeal cannot be brought against any of your Members.

Mr *Vaughan.*] The reason of the privilege of a Member is, That he should not be withdrawn from the service of the House. Any man, by such a stratagem as this, may be brought to the House of Lords—Therefore would assert our privileges.

Sir *Charles Wheeler.*] If it be so entered in the Lords Journal, “That the Lords shall have no more privilege than we,” they having their places in their House for life, and we not, we have great disadvantage—Would have the Lords books inspected.

Sir *John Fagg.*] Would rather suffer by it, than deal disingenuously with the House—Will rather subject his cause to judgment, than give you the least disturbance. He was served with an order by an officer of the House of Peers, (could not tell whether it was an order or not) “to appear to an appeal, if he thought fit.” If he has erred any where, it may be charged upon his troubling the House with it—He has waved his privilege all along in Chancery, (the Parliament sitting), also in the Exchequer, and now an appeal brought against him was so great a surprise, and the summons so short, that he could not advise with his Counsel in time—You send a Message to the Lords “to be tender of your privileges,” and the Lords answer the same as in Mr *Hale’s* case—But there was no order of yours in it of restraining your Member from appearance to it—And the cause was withdrawn. His case is this; he must

appear to the appeal, or judgment will pass against him for default, to morrow at ten of the clock. Just at that time they send you a Message. He leaves it to you, whether to insist upon his privilege, or not, to the loss of his cause—He wholly subjects the thing to you—He confesses he did submit the hearing of his cause before the Lords on *Tuesday* next—Had you laid any restraint upon him to the contrary, he would have obeyed it.

From the Lords Journal. “Upon the Commons Message, in *Fagg’s* case, “to have a care of their Privileges.” *Resolved*, That the House of Commons need not doubt but the Lords will have a care of the Privilege of the House of Commons, as they will of their own.”

N. B. The answer is *verbatim*, as in the case of *Mr Hale*.

Sir *Robert Howard*.] Point of privilege remains as full in a Member’s being summoned thither, as in a summons to any other court.

Mr Vaughan] We know not as yet what order is entered in the Lords books—We have challenged privilege, and the Lords have answered it. A fault there is somewhere, and ought to be rebuked, and the person faulty lies at your mercy.

Mr Garroway.] It seems, the Lords have not determined your privileges, but your Member, *Fagg*, has determined them, and the Lords will quote this as a precedent against you. Desires that the proceedings may be no farther in the Lords House by your Member, and is for a Message to the Lords not to proceed.

Col. Titus.] Conceives it lawful for a Member to waive his privilege, but where himself is concerned only, and not the whole House. The main matter before you is not, whether this be a breach of privilege, but whether the Lords are judges of your privileges. They tell you “they will take the same care of your privileges as their own,” and, at the same time, declare, “they never knew of such privileges of yours”—If neither they nor you have such privilege from appeals, as they say, they make themselves judges of your privileges.

Mr

Mr *Garroway.*] Where can *Birkenhead* shew you our right of eternity of sitting, as the Lords have? They cannot make out the point of failure of justice, if a Member of ours may not be appealed against.

Sir *Henry Ford.*] In the case of *Lord Roberts*, and Captain *Cresset*, *Lord Roberts* was the appellant—Is it the privilege of the Lords to appeal, and not to be appealed against in the Lords House?

Mr Secretary *Coventry.*] To tell Members of yours, “ You shall view the Lords Journal,” and the Lords say “ You shall not,” and to know every thing there *in verbis*, under favour, you cannot. You can only desire copies of orders where persons are concerned.

Mr *Sacheverell.*] Suppose the Lords Journal be not a record. ’Tis more hard if they can, in the end of a Parliament, (as is said) make what part of it they please, record. If the case be so, that they have entered such an order, before the Message, you must look to it, or they will vote you out of all your privileges.

Mr *Vaughan.*] Secretary *Coventry* distinguishes not the Lords jurisdiction legislative from judicial. As the Lords is a Parliament Journal, we cannot inspect theirs any more than they can ours. If you have a right to the means of doing it, you have a right to see their Journals as well as any decree in Chancery.

Ordered, That a Committee be appointed to inspect the Lords Journal, [and to see what entries are made therein, in the case of Sir *John Fagg*, and to report the matter to the House.]

[An engrossed Bill, from the Lords, for explanation of the late Act of Popery, was read a first, and ordered to be read a second time.]

Then was read the King’s Answer to the Address about recalling the English forces out of *France**.

Charles, R.

“ His Majesty having received an Address from the House of Commons, concerning the recalling such of his subjects as are soldiers in the French King’s service, hath thought fit to return this Answer: That such [troops] of his subjects as were in the Most Christian King’s service, before the last treaty [made] with the States General of the United Provinces, and were not, by that, to

* In the Journal this precedes the Debate on *Fagg* and *Sirley*.

be recalled, as they are at present become inconsiderable in their numbers, so his Majesty conceiveth that they cannot be recalled without derogation to his honour and dignity, and prejudice to the peace he now enjoyeth, and hath publickly professed to maintain with all his neighbours. But as to the prohibiting the going over of any more, his Majesty will renew his Proclamation, and use all other effectual means both to forbid and hinder it. Given at our Court at Whitehall, the 8th of May, 1675."

[The farther consideration of his Majesty's Answer was adjourned till Monday.]

Monday, May 10.

Debate on his Majesty's Answer.

Sir Thomas Littleton.] Here is an Answer from the King—Desires that what is said upon it may not be thought to reflect upon the King, but on the authors of this Answer. He thinks it a very ill one; so highly prejudicial to the people, and destructive to the King!—Would clear the matter of fact: The Answer is, “Such of his subjects in the Most Christian King's service.”—’Tis no unusual thing to call him “the French King” in Parliament; but he rests not upon that.—Would be informed, whether by the late peace we made with Holland, the King is left free, and at full liberty, to keep these men actually in that King's service. How contrary would it be to his honour, if against no Treaty, nor Article (fettered) to recall them? Under that Proclamation mentioned, all this mischief is grown. The number of English forces there is now great; 8000 men at least. The Duke of Monmouth's regiment, and the Irish, go a great way in the number, besides the Scotch. Great numbers going into France is no breach of the Treaty; but into Holland, is a breach.—Would have that cleared. If we thank the King for this Message, we do it for sending men over into France.

Mr Secretary Coventry.] That Treaty does not command the forces to stay; but ’tis enough to tell you, that by that Treaty the King is not obliged to recall those troops. ’Tis no error to call the King of France “the Most Christian King,” as all the world besides call him.

He tells you, on his reputation, by all he knows, there are not above 2000 of these forces in all. The King, besides, tells you of his Proclamation, and "will use all other effectual means to prevent more going over." Is this such an abuse to the nation, and such a horrid thing? This is an advice to the King, in a thing he is entrusted with. This is not to be murmured at, but thanked for, to give you such an Answer, against his prerogative. Do you believe that the King, in making peace with *Holland*, did write no respectful letter to the King of *France*? And just at that hour of the King's mediation of peace, and ambassadors for it, to do such a partial act as to recall these men! Shall he be considerable neither on one side, nor the other, nor in mediatorship? Suppose the King was resolved to do it; 'tis not proper now. Cannot he keep a word, or a promise? What, if the King make a promise, and the House of Commons break it, of what value will it be for the future? If you desire a farther explanation of this Answer, you may. But he thinks it a great condescension in the King, as it is already.

Mr *Garroway*.] Observes many things to be debated, peace and war. The thing is lodged, and he will not break into it, nor meddle with it. We are not ready yet for a conclusion of our opinions to this Answer. If we open the matter of fact, see how we contribute to *France*'s greatness. The King's honour, crown, and dignity are concerned in it. If the *Low Countries* and *Flanders* should be conquered, knows not what our condition will be. We know of no obligation to the numbers of men in *France*, and so can say nothing to the recall of them.—Moves to have the King's Answer debated in a Grand Committee.

Sir *Thomas Littleton*.] Seconds the motion for a Grand Committee, to come the better to the right understanding of the matter. *Coveniry* has yielded the matter, that no treaty does impose the staying of these forces on the King. If any thing falls from him, out of zeal to his country, desires pardon; but if we let those things go,

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we give the greatest blow both to our Country and the Confederates imaginable.

Mr Sec. Coventry.] What he said was, “the Treaty of Holland obliged it not.”

Sir Thomas Clarges.] Conceives, that where the King is dishonoured, and there is a contempt of his Proclamation, and a violation of his honour, we are concerned. The Message tells you, that “the King has sent out his Proclamation to forbid all;” but, by letters from the ports, we are informed that recruits go frequently over into France, 3 James, ch. 31. “No officer can go into any foreign service without taking the oaths of allegiance.” At Dover that has not been done; they go over as if they were to be instructed in the Popish Religion, to our destruction; and by that law mentioned, “Bonds are to be entered into, and oaths (and all returned into the Exchequer) to practise nothing against that oath.” This going over is to the dishonour of the King, and danger of Religion.

Sir Lionel Jenkins.] The Question is, Whether the House should go into a Grand Committee? The execution of that Statute mentioned is left to the officers of the ports, and their crimes and omissions are not to be imputed to the King. One cause assigned for the ill execution of that Statute, is, “that they are tryable for felony, before Judges of Oyer and Terminer, and yet the fault done beyond the seas.” Lord Coke makes a difficulty upon it, and never knew any man tried upon it. The first point is, whether we, having a treaty with Holland, break that treaty by having forces in the French service.

Sir Thomas Littleton.] Took him down to rectify him. These men, before the Treaty with Holland, no breach of Holland peace not to recall them.

Sir Lionel Jenkins.] The words of the treaty, “Neither party shall give commission, directly or indirectly, to aid, &c.” The Dutch insisted on this, that the Duke of Monmouth went with a great body of men into France, which they thought so much the harder, because there was a restraint upon going into Holland. They quarrelled not

at secret going over, but avowed. When the *French* law Sir *Walter Vane* in *Holland*, who said he had leave to go from the King,—to show such a diploma from the King, was to show the supineness of the Government. He had not licence; and it was no breach with *France*—No more are these men stealing into *France* a breach with *Holland*.

Col. *Birch*.] Sees many that speak, crave grains of allowance; he has most need of any, and hopes he shall not be denied them—Is for a Grand Committee—if this thing be well done, hardly any thing else can be ill done. He agrees that war and peace are in the King's hand; but he thinks that in this business of the peace with *Holland*, the King asked the advice of this House. You are embarked in it, and the miscarriage will be the fault of this House—Would not quarrel with any of our neighbours, but especially not with the great Prince on the other side the water; but better now than at another time—While the people are under dissatisfactions, he knows no other way to satisfy them but in this House, and no way here, but in a Grand Committee.

Mr Secretary *Coventry*.] A peace there was advised in this House, but not this peace—The terms the King made himself, and he would not have *Birch* tell you what the articles are, or should be.

Sir *Charles Wheeler*.] Observes, that great things are brought into this House, and still prove but matter of enquiry. For the term of “the *French* King” spoken of, when we have wars we say so of him, and what have we got by it? In all foreign affairs they come up to the title of “the *British* King” with us. Of these men in the *French* service, he looks upon the *Scotch* guards as a thing particular to their nation, who have been in *France* sixty years at least in that capacity; the rest are the Duke of *Monmouth's* regiment, and Sir *George Hamilton's*; Col. *Churchill's* regiment being reformed into the Duke of *Monmouth's*. (Sometimes we are forced to be quit of the *Irish*, and now we must recall them.) He cannot inform himself, any way, of above 1000 horse—When

you have made all these means to prevent their going over, idle fellows will go. *He was taken down to Order.*

The Speaker.] 'Tis disorderly to take a man down, before you know what he will say.

Sir Charles Wheeler goes on.] You can stop them no more than you can the exportation of wool—Here come over *German* and *French* gentlemen of the horse, to buy horses; and there goes over, at least, a man to three horses; and so, many men under that pretence steal over. If there be not above 8000, how is the honour of the nation exposed! He fears the honour of the nation as much as another, but would have a reason for his fears.

Lord Cavendish.] 'Tis said "there are not above 2000 *English* and *Irish*." 'Tis strange there should be no more. They won two battles for the *French*, the last summer, by their own confession, and are a number to do the like this summer—Would go into a Grand Committee.

Sir Thomas Lee.] To debate the thing clearly, you must resolve, whether to go into a Grand Committee—You must first state the matter—You are told of the King's prerogative, and that when you consider the number, you will be of another mind; therefore would go into a Grand Committee.

Sir Edmund Jennings.] The King tells you, "He will use all effectual means for preventing the going over of more men into *France*"—If that be so good an Answer, return thanks for that part of the Answer; and, when that is done, go into a Grand Committee to consider the rest.

Sir Thomas Meres.] What part of the King's Answer will require a farther Address to the King, will be the subject-matter of the Grand Committee's Debate. It may be, Thanks to his Majesty will be a part; we know not.—Sees it contended, "that the forces in *France*, before the Treaty, are not obliged to be recalled;" but the objection must be thoroughly understood at the Committee. No man can say that there is any thing in our Address contrary to any Treaty. The matter re-

quires

quires a Question, and an Answer, and so must be omitted.

Mr Waller.] He has formerly seen how dear our meddling with peace and war has proved to us. We have no light nor measure at all in such things. All that comes to the King is from his own and foreign Ambassadors. These enquiries have been very fatal and costly to us. The House, in the last Treaty with *Holland*, gave advice; and the King asked it. Now it falls out properly, to see how that advice has been infringed; followed, or not followed. A knotty business there will come before you, this advice not followed—'Tis the Nation's glory to have the King the Mediator of peace, and christian commiseration requires it. The thing is of great weight, and would go into a Grand Committee.

Sir John Ernly.] Since you have had a Question firsted, and seconded, “for Thanks for that part of the King's Speech, of his effectual care to prevent the going over of more forces,” you ought to put it.

Mr Secretary Williamson.] Here are two Questions; one, the main Question, about Thanks, &c. and the other, for going into a Grand Committee. If the matter be opened, doubts not but the whole Answer will require your Thanks. Supposes the thing may be done in the House, as well as in the Grand Committee. He is but young in it, and leaves that Question as you please.

Mr Powle.] To the first part of your Address you have a denial; to the second you have no Answer at all. There are several forces gone over since the Address—But men being sent away, and the thing depending, would therefore have it go to a Grand Committee.

Mr Secretary Coventry.] He has heard the King say, “Have not the ports a standing order, to stop persons? Must he send them one every week?”

Mr Hale.] There are few in number, indeed, of these forces left, because they are most killed—He knows he saw upon the road eighty in a company—They land at *Boulogne*, and will not land at *Calais*, because in view of the packet-boats—The Duke of Monmouth's regiment is recruited by these men, and *Turenne*'s army had been lost without them;

them; and 'tis said in *France*, “they set the crown upon the King of *France's* head.” He has lately had opportunity to know it in *France*.

Mr Vaughan.] Your vote cannot make that to be, which naturally is not, *viz.* “Thanks for the Answer, and that it is *satisfactory*.” Possibly there may be a league in the case, and the King's honour concerned; and when we come freely to debate it, in a Grand Committee, we lay aside all these considerations.

The House resolved into a Grand Committee.

Sir Charles Harbord in the Chair.

Mr Garroway.] This is one of the seriousest businesses that ever was in the House—Would do nothing in it, to involve the nation in a war; but it staggers him to hear the King's obligation named; but yet what that obligation is, not spoken of. Whether it be a treaty, or no; for what time, or on what condition, if declared, we may avoid that rock of a war. All we have told us is but a pennyworth of news in the *Gazette* every week. Sometimes we know things that they do not tell us. Let them set us up some marks whereby we shall not touch upon the King's honour, and they will be good guides to us for our Debate. The King of *France* is ready to overrun us all, if his conquests go on.

Sir Richard Temple.] If the Proclamation recalls not these forces, he would go as far in a Bill in it as may be. Proposes a farther Address to the King, “to recall all persons gone over since the *Holland* peace.”

Mr Secretary Williamson.] How difficult is it to meddle, or come to any resolutions, in things where the facts are not known? He is not to answer for the King of *France's* violences and oppressions. 'Tis said he took *Treves* for his convenience only, and on intercession of letters, to break the neutrality of that place, he took that town himself into his possession. As soon as that spark fell upon the Palatinate, the King offered a mediation at *Cologne*.* Some matters are such in these affairs as

* Sir Joseph Williamson himself was one of the Plenipotentiaries. cannot

cannot be laid open unto you. He thinks that the King will do more than he says. 'Tis our great interest to balance the matter with *Holland*. He is as jealous of the successes of *France* as any man ; and if this alliance be made with *Holland* and *Denmark*, and they strengthened by sea and land, we ought to think of that balance. When the peace shall be made, 'tis our interest to have it go through the King's hands. You were told of an exception, at *Vienna*, against our mediation ; but he hears no such thing. Give this matter the best end you can, it will hazard our mediation. *France* has paid *Sweden*, though but a stander-by, and neutral ; and whilst we show such a partiality as this recalling the forces will be, it will put the *French* King upon providing for himself, as not trusting our mediation. He fears that declaring ourselves so generally as is proposed in the recalling these forces, and being not obliged to it by the treaty of *Holland*, may be a just exception against our mediation, and may encourage *France* forsaking us in the general treaty of peace ; they discovering we are declaring partialities, and so will reject us.

Sir *Thomas Littleton*.] The second sort of men are gone into *France*, since the *Holland* peace—The first are wholly omitted in the Answer—Doubts that the last part of the King's Answer is intricate. It is a general prohibition, but that is no part of our Address. The King tells you, “He will take any farther way to prevent their going over.” If taken in a general sense, he is not satisfied that it is an Answer to our Address. As to that of the old men there, he says that there was no Article to the contrary, but that the King might recall them—Easy to know a Secret Article—No man to go into *France* or *Holland*—But the going into *France* is so public, the private Article is now as public. How know we what promises have passed from the King about these forces ? He knows of none, nor is willing to believe any ; being only spoken of by way of supposition.—*Williamson* said, “We, not knowing the intimacy of things, might be deceived.” But 'tis as certain, that
the

the French King has taken Treves for his convenience, as that he has made this war for his glory. And farther, he tells you, "That the busines of the Palatinate happened through the neglect of the interposition of the King of England." Is sorry to hear the authority of the King of England was employed to hinder the Elector—He might not have been so over-run—'Tis said, "this recalling, &c. would prejudice our mediation." Is one of those who understands not how the mediation can stand to the good of England. He apprehends that the King, without the assistance of the Parliament, could not carry a war on against Holland,—And is afraid that the authority and figure the King has in his neutrality would be made use of for the French advantage—Therefore desires the King may now be put out of that capacity of mediation, to make the King of France a terror to all Christendom. To continue France in all these acquisitions, and secured in all, or the greatest part—The Confederates wasted, and the French army maintained in the bowels of the Confederates country, scarce reparable in this age—if the Confederacy be dissolved before the French be reduced back to France again, the most ruinous thing in the world! When once the Confederates dissolve, and France in this high posture, fears that the Confederacy is never to be renewed to the end of the world. He speaks like an ordinary man; you have his good-will—'Tis a plain thing; he sees no good we can have when the Confederates are broken, and we strive to put the French [King] into that formidable condition, that we should be afraid to anger him now, what will it be to anger him then, when the Confederates are broken? He must have Dover, because he is angry with us, and over-run us at last, as he has done others.—*Exceptions being taken by Mr Secretary Coventry at what fell from him, thus explains himself.*—The King not to be in such a mediation as to leave the King of France a terror to all the world.

Mr Garroway.] If we were off from France, all the world would put us upon being mediators.

Col.

Col. Birch.] Littleton's words were, "Such a mediation as may make the King of *France* a terror to all *Christendom*."

Sir Thomas Lee.] The words are to be written down, that to eternity the world may know what the opinion of this House was.

Col. Titus.] It belongs to the Gentleman to explain himself—"As if the King should be so inconsiderable as not to be mediator." If any interpret the words so, the Gentleman must explain himself; and he has done it, and sees no reason why the words should be set down.

Sir William Coventry.] Begs leave to pass by what has passed, as a parenthesis, and proceed to the business. It is good news to him that the balance of *France* was so near being made by these forces. When *France* first made an inroad into *Holland*, how long was it before there was any thing to look her in the face! *France* sees, by that, the danger of letting the Confederates come together—When disunited and peace, no such thing as balance—That no predominant power be a terror to the rest, is our true balance between *France* and *Spain*. He wishes that the dust was a little shaken from the balance in the matter—He has not heard that mediations have been of such a value as to leave out the aid of a kingdom for them. He does not think that this withdrawing the forces would make us improper for being mediator, for sometimes mediations may help to obstruct peace as well as make peace. Many others are admitted for mediators as well as we. He has heard of the state of *Venice*, and the Pope, and respects are seldom refused when offered as mediation—Fears that the prevalency of *France* will spoil our markets more than any thing—When she has got peace, we are like to have a hard market—We can buy our wines but of one chapman then, but if *France* be brought low, you have choice of Chapman for any wares she can carry to market—Will offer something to the matter of recalling these forces—Does not conceive it possible to have these forces back, or prevent others going over, unless it be before *Holland* have peace with *France*.

It
was

was intended by the King and his Ministers, that no more should go over; yet they do. As long as regiments and officers are there, 'tis his interest to have them recruited, to keep the troops up to such a degree. The root will draw nourishment as long as it grows in your garden, and to destroy it you must pluck it up. When the thing is rightly considered, hopes the King will have other thoughts. There appears no treaty between *France* and *Holland*, and is confident that there is none. We have no treaty yet finished with *Holland* to establish commerce, and believes we would not send subjects to assist the King of *France*, to make him greater, 'till that be settled. 'Tis a probability, that after *France* has made peace, and ever shall be in a condition to reckon with us, they will do it, for making peace without them, as well as for withdrawing men away now. It is not ordinary for Princes to be bound up thus; the honour of a Prince, at home, is the maintenance of his subjects; and, abroad, not mistaking his interest. Did the King intimate he was to send no more forces? If the *French* King has used means to draw men over, he has cancelled all obligations to the contrary; therefore he hopes, that [there is] nothing in the whole matter but [what] we may have a gracious Answer [to]; and is for the Address for recall of the forces.

Mr Secretary *Coventry*.] All the long discourses here have been, "Whether we shall go to war with *France*, or no." As to the comparison of the "plant in a garden," the best answer to Experience is Experience. There is not one *English* pair of colours in *Holland*, and yet more men gone over into *Holland*, by thrice the number, than into *France*. These are things that cannot be avoided. A man of honour breaks not his word with any man, but much less where he is most obliged. If there should be any such agreement of no more acceptance of our troops, *the eagles will go where the carcass is**, where money is. More of our men have come over to *Holland* from the *French* army than we have sent into *France*. Should the world take notice of any unanimity

* *St Matthew.*

betwix:

betwixt you and the King, let all men lay their hands upon their hearts, and declare, whether the King can recall these forces with his honour.

Col. Birch.] *England* is of that spirit, rather to desire to know the worst of a danger, than stay till to-morrow for it. You are told of “secret engagements that may prostrate the honour of the King.” In this case here is an end of your Debate. Either we must debate thus, or consider how the interest of the nation is. The King cannot miscarry when he goes into this bottom. There are ninety in a hundred against *France*, all *England* over. You may make war with *France* with the money he over-balances you in your trade, which you get, like bees, by industry—Remembers that if you had not only made peace with the *Dutch*, but told the King of *France* why you did it, you had not now debated this matter here. If you will not adjourn the Debate, put the Question.

Mr Sawyer.] Whenever you demand right you stick to it. As on the imprisonment of one of your Members, there is either cause shown for it, or else you deliver him. You have made Address upon Address for him, and if not released you adjourn, as in Lord *Arundel's* case, in the Lords House*. Where an Address for a thing is matter of advice only, and not of right, you have always acquiesced in the King's Answer. If it be a demand of right, he is for adhering; but it being pure matter of advice, and the King tells you positively, “he cannot do it with his honour,” where will it end if the King should deny you? And you cannot force the matter upon him, but leave him at his liberty—He appeals to precedents in this kind.

* This was in the year 1626, when the Earl of *Arundel* was committed to the Tower for being too severe in language on Lord *Spencer*, concerning the marriage of his eldest son, *Henry, Lord Maitravers*, to the Lady *Elizabeth Stuart*, eldest daughter to the Duke of *Lenox*; which, it was alleged, was done contrary to the King's content and knowledge, he having designed her for Lord *Lorn*. When the Parliament met, the Lords, being discontented, presented several petitions to the King, to preserve the privilege of Parliament, and, no cause of his commitment being expressed, at length refused to sit, until he was restored to them; which was ordered accordingly, in about three months. *Collins's Peerage*, Vol. I. p. 139.

Mr Vaughan.] Finds now the whole stress of the business to be “the King’s honour.” “If all national contracts are broken, no nation will trust us.” ’Tis so amongst common men—But after you find leagues have been destructive, it has been the prudence of Princes, (who may err like other men) to recall such leagues. When a peace shall be made, you expose these men to be knocked on the head; and when wounded, they have been knocked on the head to make room for the *French*. If you allow them to be there, you may be put to pay them before long—Therefore would recall them:

Mr Secretary Coventry.] Inspect records; and you will find whenever a King has told you, “he could not concede a thing with his honour,” that you never have farther pressed him to it.

Sir Edward Dering.] Would, in this great affair, take the deliberation of one whole night to consider of it, and would now adjourn the Debate.

Sir Thomas Meres.] To answer the objection of law—In the case of the Palatinate you will find a Message of this nature, and lately, in the Duke’s Marriage with *Modena*, a second Address*. He thinks we have a right to petition *pro bono publico*—These forces are *documentum publicæ*, a nuisance; and doubts not but the Address will be with all humility imaginable.

The Question being put, Whether a farther Address should be made to the King for recall of his subjects now in the service of the *French* King, the Grand Committee thereupon divided; and the Tellers, *viz.* Sir *Trevor Williams*, and Sir *John Hanmer*, appointed by the Chairman, Sir *Charles Harbord*, differing in their account of the Yeas and Noes, some called, “Tell again,” others, “Report;” on which great disorder began; gentlemen rising from their places and mingling in the pit; hot and provoking discourses and gestures passed on both sides, especially betwixt Lord *Cavendish* and Sir *John Hanmer*. Some said, that Lord *Cavendish*’s sword was half drawn out, but prevented by Mr *Russel*, who kept close to him. Others said, that Lord *Cavendish* spit in Sir *John Hanmer*’s face, but that was only eagerness of speech, and so some might accidentally fly from him. But it was visible to all

* See Vol. II.

that

that Sir James Smith, setting his arms on his side, did, in a rude manner, make through the crowd, and jostled several, and came up to the table, where yet more hot discourses passed between him and Lord Cavendish, Mr Stockdale, Mr Sacheverell, and several others; Mr Stockdale, and some others, setting their feet upon the mace, which lay below the table, in the usual place at Grand Committees. This disorder continuing near half an hour, the standers by, on the upper benches, expecting very fatal consequences; especially when the young gallants, as Mr Thynne, Mr Newport, and several others, leaped over the seats to join Lord Cavendish. But the Speaker, very opportunely and prudently, rising from his seat near the Bar, in a resolute and slow pace, made his three respects through the crowd, and took the Chair. The mace was still retained by the said gentlemen, but, at last, being forcibly laid upon the table, all the disorder ceased, and the gentlemen went to their places. The Speaker, being sat, spoke to this purpose, "That to bring the House into order again, he took the Chair, though not according to Order." Some gentlemen, as Mr Sacheverell, and others, excepted against his coming into the Chair, but the doing it was generally approved, as the only expedient to suppress the disorder f.—Then

Sir Thomas Lee, *approving of the Speaker's taking the Chair, though not according to Order]* Moved that there might be an engagement passed upon the honour of every Member, standing up in his place, to proceed no farther in any thing that had happened in the unfortunate disorder at the Grand Committee, fearing that, as soon as the House had risen, the thing might be recriminated, and ill consequences ensue thereupon.

Which was seconded by several, and agreed to. So every Member, standing up in his place, did consent accordingly; then particularly,

Col. Somerset Fox.] Declared that some warm ex-
f There is no mention of this disturbance in the Journal; all that is there said is, "Mr Speaker resumed the Chair." But a writer, who was, probably, present at it, gives the following account. "One day, upon a dispute of telling the numbers upon a division, both parties grew so hot, that all order was lost; the Members ran in confusion up to the table, grievously affronted one by the other, every man's hand upon his hilt, and all ready to decide the question by the sword. But when the tumult was loudest, the Speaker had the honour to restore the peace, by maintaining the dignity of the Chair, after that of the House was gone, and obliging every man to stand up in his place, and engage his honour not to resent any thing of that day's proceeding," Marvell's Epistles, p. 47.

pressions had passed between him and Sir *Robert Thomas*, but, upon command of the House, he would give his honour to proceed no farther thereupon.

Sir *John Hanmer* did the same, but named nobody.

So the House adjourned to the next day.

Tuesday, May 11.

Several motions were made to go into a Grand Committee upon the business of the preceding day.

Mr Secretary *Coventry*.] Your Committee being at an end, he knows no ground for the motion. The thing has been debated as long as you think fit, however that unfortunate disorder came yesterday, which he wishes eternally forgotten—But he, hearing some scruple made, that there is nothing in the King's Answer of the men going into *Holland*, (it was *casus omisssus* in the King's Answer). Has since had discourses with the King about this matter, and he has leave to say from him “that the forces shall be recalled”—These were men he allowed the King of *France* to be raised with his own money.

Sir *Thomas Meres*.] This that you have been told, will not hinder the Address, but alter the modification of it. Before we know that is to be had, which the Secretary tells you of, we must make an Address—Would go into a Grand Committee for barely forming the Address; from what has been told you, it must have a farther Address.

Mr *Garroway*.] Thinks those that moved the adjournment of the Debate yesterday, did not believe themselves at the bottom of the matter, who forbore to a more calm time—Would have a clear Debate of the thing now, with all respect and duty to the King, which cannot be without a Grand Committee.

Mr Secretary *Williamson*.] More cannot be said than has been said in this matter; the Debate was yesterday ripened, but the numbers agreed not; you may only now put the Question, now you have it expressly from the King—Two parts of his Answer are clear—if you put the Question on the Address, it must be on the remaining part. Sir

Sir Thomas Lee.] Secretary Coventry told you, "He had it not in direction from the King, to tell you what he said," and Williamson tells you now, "You have it clear, directly from the King."

Mr Secretary Williamson.] Does not own it as a direction from the King, but yesterday it was their *belief*, and now their *knowledge*, of the King's mind.

Sir Tho. Lee.] Believes 'tis the King's opinion, that he will comply with the opinion of the House; but we have no more ground for it than yesterday, and therefore ground for a Debate upon it now. 'Tis a business of great weight. How will it appear that you dare not go into a Grand Committee? Your disorders were so great yesterday, that he would not have that left doubtful to posterity, whether you dare go into a Grand Committee again.

Sir Thomas Carges.] Sees now we are a full House. He is against any restraining of the Question—He is not for taking what fell from the Secretary to be taken for a ground to go upon, as being discourse only betwixt the King and him, and not a Message to us—Would put the Question, yesterday in Debate, to the Question now.

Mr Vaughan.] In talking of the Grand Committee yesterday, we talk of a dream, as nothing. The disorder yesterday must reduce the matter into a Grand Committee again now; and moves it.

Mr Secretary Coventry.] There are precedents of Answers from the King, without a formal Address. In Lord Arundel's case, from *March* to *May** no formal Address, the King not making a satisfactory Answer to the Lords. The Lord Keeper brought the Answer by word of mouth—You may have it so brought here, by particular Members, from the King's mouth.

Sir John Hotham.] If we can have our Question that we stood upon yesterday, is not for having it go to a Committee; but if the Answer be to part only of our Address, till we are plainly told so, would not go into a Committee.

* See p. 127. note.

Mr Sacheverell.] He never heard that the House intrusted particular persons with reasons for what they do. He is for the Address, with reasons with it. 'Tis not for the interest of the people to aggrandize *France*, but to pull her down—Is sure, if Gentlemen had been here, they would have been satisfied with the reasons. The Question now is, “for a farther Address to the King, for recalling his subjects out of *France*.”—In answer to *Coventry's* precedent.

Col. Birch.] 'Tis now before you, whether you will go into a Grand Committee, or debate the thing in the House. He believes that the reason for going into a Grand Committee is now ceased. Yesterday we were forced to speak oftener than once, and so replies were oftener than once. If there be any reason for it now, 'tis only to show them that trusted us here, that we can govern ourselves better than we did yesterday. If there be a necessity to speak oftener than once, then is for a Committee.

Mr Powle.] The first Question is, “Whether we shall make a farther Address to the King.” 'Tis acknowledged by all, that there is no Answer made to the one part of our Address—that is *casus omisssus*—Would go to the first Question, “Whether an Address be farther made by us?” and then consider the parts of it.

Col. Strangways] Seconds Powle's motion. Yesterday some said, there were 8000 of our men in *France*; others, but two regiments; the Duke of *Monmouth's*, and Sir *George Hamilton's*, and Col. *Churchill's* reduced; and you take care they be not recruited, when the King shall take care for no more going over—Would not have the House brought into a war by a side-wind—Would have the King of *England* keep the balance. The House was formerly brought into a war by such a Vote. What shall we desire more? All the world trades in our bottoms—Let us have a native Question, and not complext.

Mr Vaughan.] We come to fight now with our shoes on our hands. We must handle this matter thoroughly. Dividing the Question must bring you into a Grand Committee

mittee—Would rather be embroiled in a war, than give up the kingdom. We that have formerly given law to *France*, may, at this rate, be under the *French* edicts. The generality of men in *England* would fight against *France*—He matters not for them abroad, corrupted in their principles.

Mr Secretary *Coventry*.] Whoever is against recalling all the King's subjects, is against your Question—Either against the Address, or for all—if any man has a mind for the Address, or no Address, he says so—if for part, and not all, in a Committee, every man comes up to his own opinion.

Sir *William Coventry*.] It happens that, at this time, he concurs with his brother—Sees not how we are the farther from attaining the Question by a Grand Committee, and there every man's sense is comprehended. The Question is, “Whether the word “all” shall stand.” And then a man may vote clearly, if he please—Will not reflect upon yesterday; therefore desires that what we do may be unanimous in a Vote to-day. If the word “all” do stand, the Question will be divided again—Moves, therefore, for a general Question, “his subjects out of *France*,” without the word “all;” and the next Question, “Whether the word “all” shall stand?”

Sir *Thomas Littleton*.] The season being come for what he intended yesterday to move, shall now do it. He differs from *Coventry* only in circumstance—Not so much as a Question, whether a farther Address—’Tis yielded that it was *catus omisus*, and therefore not of that importance for union—Shall only say, to the objection of involving us in a war with *France*—Shall we not fear the recall of our ships, and shall we fear the recall of a few men? And, should *France* declare war upon it, he believes that gentlemen would willingly contribute towards it. We have no great reason to apprehend a war; and, if we should, he believes the King would be assisted by the nation.

Mr *Garroway*.] Could he foresee what *Coventry* says, should not be against going into a Grand Committee—

Fears that, in Debate of particulars, we shall go into new heats—You, by the word “all,” bring an unanimous Vote.

Sir *Thomas Lee.*] The case is altered now; we are come out of the *Dutch* war. You are told, “*France* are masters of trade;” and shall we enable them to be so?

Mr Secretary *Coventry.*] When the King of *France* has the King’s honour engaged in the matter, one must be better versed in matters of honour than he is, to know how to release him from his engagement. The King of *Spain* does not expect you should be angry with your own King, the King of *England*, for his sake. Consider how gracious the King has been in his Answer to you.

Sir *Nicholas Carew.*] You have objected from the Bar “all.” You may except the *Scotch* in *France*, if you please. If the King of *France* has had leave to raise men, must he have them for slaves? We have done him more service than he has done us. And hopes men remember how the *French* fleet served us.

Sir *Thomas Littleton.*] *Coventry* objects, “if these original men should be recalled, *France* would have nothing for her money, being raised at her charge.”—He explains himself; *France* has had great benefit by these men. They got *Maestricht**, and other places, which makes a sufficient recompence for them.

Mr Secretary *Coventry.*] Would be answered, if any man could show him where the King’s honour is clear in the matter—The King has told you his reason, and would have it considered, whether recalling those regiments is of such value as to make the King break his word.

Mr *Powle.*] It seems, the King has heretofore given the *French* leave to raise men, and therefore must now. ’Tis now clearly seen, whither *France* drives and tends. The treaty with *France* is carried on contrary to the pur-

* At this siege the Duke of *Monmouth* had the command of the attack of the counterscarp; and behaved with such conduct and bra-

very, that the *French* King made a public acknowledgment of it, and six days after the town surrendered.

pose it was first intended for; and being against the safety of the nation, was the great reason of *France's* invading *Flanders* first. Obligations and oaths bind not in the case of the interest and preservation of his people. The case is clearly this: Whether we shall give assistance to *France*, or no. He thinks the case rather runs to resistance. *France* preponderates, and therefore 'tis not our interest to add any more grains to the scales. If war should here-upon ensue, he should be as forward to assist towards it as any man—Would have it put, “Whether the word “all” shall stand in the Question.”

Mr *Sawyer.*] The difference that is made, is between the men that went over before the treaty and since—There lies the difference—To one part we have an Answer, to the other part of our Address, none. 'Tis said, “That the King's honour is no argument”—The true argument is not, whether 'tis against the King's honour, or no; but whether the King thinks so. And you put a hardship upon the King to say, 'tis not against his honour; therefore would leave out the word “all.” He has heard, without doors, gentlemen aspersed, that we are half *Frenchmen*. But whilst we are expelling the *French*, let us not expose the honour of the King; and in that we are true *Englishmen*.

Mr *Finch.*] Would be unwilling to lose in a great measure “all,” because we cannot have part. If by the Address to the King, we can have 7 out of the 8000, we ought not to expose one part to lose eight. When we have got the King to grant this, it will have little effect, most of these men in *France* being such as will have little livelihood here, when they return. If they could have stayed, few would have gone. Suppose they should come over, how far can 2000 men turn the scale of so great an army? It was insinuated, yesterday, to be against the King's honour to recall them, when the *Dutch* and the *Spaniard* never insisted on it, and we, that are out of danger, insist upon it, and they near. 'Tis not so decent a way of argument, that, because the King has granted us so much, he should grant us all—

There's difference between *France*'s case and ours. *France* could not so easily part with the rights of that Queen to *Flanders*. The King of *England* breaks a word in his own power to keep. The *French* King's right to *Flanders* is in his wife, and not in his honour. Next consider, whether it be prudent for us to do this, or no.

Mr *Vaughan*.] We want men for servants to eat our bread. It is insisted on, that we put a hardship on the King. If the King makes a promise destructive to his honour, they are not the King's words, they are his advisers, who would screen themselves under that sacred shelter, and stain the royal robes with their own guilt. The King told us, in his Speech, "he would stick to his Declaration;" and yet, upon our reasons, he revoked it. Now, say the *Dutch*, "'tis a national concern; the Parliament takes notice of it;" and if the *Dutch* should break with us, because the *French* are not removed, they have just grounds for it.

Sir *Thomas Meres*.] Our jealousies of Popery, or an arbitrary Government, are not from a few inconsiderable Papists here, but from the ill example we have from *France*. You have twice voted the thing; and, to avoid the censure of a volatile temper in yourselves, is this Vote desired. The 2000, spoken of, were mowed down by the war; they were 9000. But it's not the fetching 2 or 3000 men from the *French*, but your showing the sense of the nation, and strengthening the Confederates, who, in effect, fight your battles; and shall they be discouraged? 'Twere better the Question had never been started, than not carried in the affirmative.

Sir *Edward Dering*.] If ever wisdom and moderation were requisite, 'tis now. The King has professed no other intention to us than kindness: The reputation of this Government abroad depends much upon the good correspondence betwixt him and us. Foreign Ministers, that correspond abroad, have represented that our frequent recesses may be from a misunderstanding betwixt the King and us—But when shall we do it? Now more seasonable than ever, when the King asks little, and expects

pects as little from us—Would not, therefore, press the King farther in this. The King's honour is ours—And is against an Address, which he is so morally assured we shall have denial of.

Col. *Birch.*] Agrees with *Dering*, that the thing is of great weight. Our resolves, in this case, will make the people of *England* either merry or sad. The King has called us together, and believes 'tis to have our resolutions in this matter—The King knew the people's temper, in this matter, before we came hither; and now this requires plain dealing. On the advice of this House, the King made a league with *Holland*, and his honour was as much concerned then as now. The King says, “he cannot, with his honour, recall these men;” and whenever the King says so again, the consequence will be, we must say so too, and go home. He knows not how to bring off the King's honour, but in this way we are in—Possibly he may say to the *Dutch*, “He was forced to continue these men there: But, at the intreaty of his people, he will recall those remaining.” If the gentleman can tell what to do with 5000, he can tell what to do with 2000. In short, the people are unquiet in their minds, and is confident the King is so too—Hopes no-body is so uncharitable as to call men *Frenchmen*, that vote here—Would willingly be delivered out of his fears, without this word “all”—Must some continue with the *French* King, to insinuate their principles into us? *Sylla* did cause his soldiers to repair into *Scipio*'s camp, being acquainted with craft and subtlety as well as himself, where, being conversant, they corrupted *Scipio*'s men, with money and promises, and by that means brought off 40 ensigns. They have been well taught at sea; would not have them at land too. He cannot forgive those men that were the occasion of it—Who will ally with us, or help us? Will the Confederates do it, when a body of our men oppose them? When the *Dutch* see so little assistance from us, will they help us? 'Twill be too late to do this, when *France* has made peace. He sees no way to come at our own safety but by this way, and

and, therefore, would have the word “all” in the Question.

Mr Sacheverell.] Would know, whether ‘tis less honour for the King to break his word, or his oath; *and reads the King’s Coronation Oath.* If any man will say, mischief of damage may not come to the nation, ‘tis not against his oath—By leaving the word “all” out, you approve of these men being in *France*.

Sir Lionel Jenkins.] By *Sacheverell’s* inference, to change laws, one branch of the King’s oath is taken away. As the Parliament cannot be thought infallible, so the King may deliberate. He is unsatisfied at the doctrine taught here of leagues. We find them not in any discourses in the *Roman Senate*; but when leagues were once made, they were sacred. The case is as in ordinary reconciliations. He leaves the King to judge of his own honour—His character and greatness makes a private man no way capable of judging it. He hears some men speak of a war with *France*.

Mr Vaughan.] Took him down to Order. Would not have any man mis-recited—No man spoke of a war with *France*.

Col. Strangways.] Justifies Jenkins. He appeals, if arguments here have not been that way?

Sir Thomas Lee.] Takes Strangways down to Order, for taking another down; and beginning to argue himself,

The Speaker.] “We” is not a parliamentary expression; and no man can answer but for himself.

Sir Thomas Meres.] We that have spoke for this question may be said to do it.

Sir Lionel Jenkins, proceeds—He begs pardon, if he understood not the Debate right; speaks only to argumentation—*Sacheverell* speaking of his country’s inclination, if war were with *France*—He is sure, that the sense of the House is against a war with *France*, at the present—if not for a word, desires that nothing provoking be done to a war. ‘Tis a fundamental rule in neutrality, one Prince shall not make another better or worse in war—Has the King of *France* raised those men with

with his own money? Can he hang a man for running from his colours? The recalling the men is weakening him, and by consequence breaks the neutrality. Why, are not the *Dutch* men of war under—canon of freedom, and under protection in our ports? The King cannot make their condition better than it was before. Any merchant else may carry arms, which they cannot do, because they are contraband goods—If this be allowed a ground of neutrality, the recalling those men has an influence on the war; and, if done, a just ground of war on the King of *France's* part. 'Tis a subducing. In 1635, in the *French* war, the Emperor thought *Treves* subject to the Empire, and he seized it—The neutrality with *France* unjustifiable—The war with *Holland* was for his own glory; and this is as little justifiable as that, being a subtracting from him; and therefore he is against the word “all.”

The word “all” was, upon the Question, left out of the Address. [173 to 172.]

[*Resolved*, That a farther Address be presented to his Majesty, for recalling his subjects that are in the service of the *French* King.]

Wednesday, May 12.

Resolved, That Dr *Thomas Shirley* be sent for in custody of the Serjeant at Arms, to answer his breach of privilege, for prosecuting a suit, by Petition of Appeal in the House of Lords, against Sir *John Fagg*, a Member of this House, during the Session, and Privilege of Parliament.

Ordered, That Sir *John Fagg* do not proceed in the Appeal depending before the Lords, without the particular leave of this House.

Adjourned to Friday.]

Friday, May 14.

Report from the Committee appointed to inspect the Lords Journal.

“That *Thomas Shirley*, Esq; petitioned the Lords [April 30] against Sir *John Fagg*, in an Appeal; whereupon Sir *John Fagg* was ordered to put in his Answer, [on Friday, May 7] if he think fit. Then there was a Message [May 5] from the Commons, viz. “Being informed of the Petition against Sir *John Fagg*,

Fagg, they desire the Lords to take care of their privileges." Ordered, That the Committee of Privileges meet to consider of the Message from the Commons, and to search precedents in the matter. May 6, the Earl of Berkshire reported, "That the Committee have considered of the Message from the Commons, and are of opinion, that 'tis the undoubted right of the Lords [in judicature] to receive [and determine] any Appeals against Members of either House, in time of Parliament, that there may be no failure of justice *in the land.*"

"The Lords agreed with the Committee."

"The Answer, in the case of Mr Hale, was, "That the Lords will have a regard to the privileges of the House of Commons, as *they have of their own.*" The same Answer they made in Sir John Fagg's case. Sir John Fagg appearing at the Bar, on Friday, [May 7, and desiring longer time] the Lords ordered Sir John Fagg to have a farther time for putting in his Answer [till Wednesday, May 12,] and Fagg then put in his Answer accordingly."

[Debate.]

Sir Thomas Lee.] Observed, That another of your Members, Mr Arthur Onslow, has a Petition against him by Sir Nicholas Stoughton, and he is ordered to put in his Answer on Monday next—On Wednesday you ordered Shirley to be sent for in Custody—Would know how your Order has been executed.

Sir John Norfolk [Serjeant at Arms] said, "he had not his Order till this morning; and Shirley was not to be found."

Mr Secretary Coventry.] Hopes you will give the Lords Court as much honour as any other Court; as that of Chancery.

The Speaker.] If a Member wave his privilege, he does what he ought not to do; it is the privilege of the House—It may be an argument to punish the Member, but not to wave the privilege of the House.

Sir Thomas Lee.] The Question is not now, Whether Shirley shall be punished for bringing an Appeal against your Member; you have resolved that part. The Question is now, What you will do as to the Lords breach of your privilege?

Sir Robert Howard.] The Question is not, Whether your Member shall wave his privilege, or no; he has addressed

addressed to you ; and now, that he has made his appearance at the Lords Bar, 'tis not possible for him to wave it.' The point is, whether *Fagg* shall now wave his privilege ? *Shirley* might have brought his cause into any Civil Court, as well as to the Lords Bar. Now, that your Member has made his appearance, you must consider what your Member has done. The Lords say, " 'Tis their right, that so there be no failure of justice." In *Prettyman's* case of imprisonment upon an execution, you delivered him, to preserve your privileges ; and there will be always a failure of justice in time of privilege—Would, therefore, enter your own privileges into your Journal, as the Lords have done theirs. Your Member is, without doubt, to blame, for appearing and proceeding, without your leave.

Sir *Thomas Clarges.*] Would not have a failure of justice, as *Howard* says—He has heard say, Appeals in the Lords House are not ancient. If they have begun any time within memory—we are not to take notice of them. Where a breach of privilege shall take away a man's freehold, very dangerous—Few Peers are present at the hearing, that are at the sentence. If their jurisdiction be not ancient, would hear the Lawyers in it. The Lords are a Court of Law ; but, by taking Appeals, they are a Court of Equity. The Star-Chamber, the Court of *York*, the Court of Requests, they all fell, because they were not of legal constitution—The High-Commission Court was by Act of Parliament—Would have the Lawyers give opinion in this business.

Serjeant *seys.*] In cases of great concern, your Members cannot wave their privileges, without leave. For Appeals, 'tis not to be denied they are a Court of Record ; but Appeals must come from Courts of Record to them. They must take Appeals out of the judicial part of Chancery in the petty bag. Writ of error, to that Court, lies not for matters in that Court by *subpæna*, or *scire facias*, but out of the petty bag, as conditions in law, bargains, and contracts, &c.

Mr

Mr Sacheverell, one of the Committee for inspecting the *Lords Journal.*] Finds the case, that *Shirley* petitions against *Fagg*, by way of Appeal to the House of Lords—*Shirley* had exhibited a bill of discovery against *Fagg* in Chancery, which *Fagg* pleaded to, as a purchase on a valuable consideration. The Court says “they have no farther cognizance of the matter,” and dismiss it. Now *Shirley* appeals. An Appeal supposes a judgment by record; and the Lords make a Judgment, and have no record before them, nor can have. If they take cognizance of this, they rest themselves in what the law may relieve. If they meddle with such an original cause, ‘tis a hard case for the purchaser to discover his estate. In the *Lords Journal*, the matter is referred to a Committee of Privileges—They think, it seems, that all Appeals (not limiting themselves to this) ought to come before them, “to avoid failure of justice”—They have entered into their books, “that they will be as careful of our privileges as of their own;” and, in the mean time, they have proceeded in the cause against *Fagg*, barely as a Court of Equity, without any record before them—Would have the Counsel’s opinion in it.

Mr Powle.] The Question is, Whether your privilege is violated, or no? In that you have given yourselves redress, by *Shirley*’s being sent for in Custody, and ordering your Member not to proceed any farther—He concurs with the motions for consideration of the power the Lords have in these Appeals, as an arbitrary jurisdiction. The thing is of no antiquity—Upon search of records, sees not the least shadow nor footsteps of it. The first was in the case of *Magdalen College in Oxford*, 18 James. The Lords had no jurisdiction of the matter, and the Decree in Chancery stands good to this day. There are precedents of their taking Appeals, in the time of the Long Parliament, in irregular times. Resolution in Henry VI. time, “that errors in Chancery are on the petty bag side only.” But by *subpæna* and *English Bill* they are not, being not matters of record. By this way, Chancery may be extended to any jurisdiction whatsoever, and

and so causes come to be determined by the Lords, and no record before them. This will be a great inconvenience in the very frame of the Government—Moves that *Tuesday* next may be appointed to take this matter into farther consideration.

Sir *Thomas Lee.*] Takes the case to be this—Here is a Petition delivered by *Shirley*, and an Answer put in by *Fagg*; they may proceed—and your Member not heard. There is no way, but by a Message to the Lords not to proceed any farther in the cause. A Judgment entered against your Member, and privilege destroyed, are never to be redeemed more. The Lords take Appeals, and you forbid your Member to proceed. If the Lords proceed, the business is riveted for ever—Moves, therefore, for a Conference, that your Member may be no farther proceeded against.

Sir *Thomas Littleton.*] How long would you have the Lords suspend proceeding? Unless you determine it thus: “Not to proceed *presently* in the matter.”

Sir *Thomas Lee.*] Meant no more than this; at the Conference, to desire the Lords to suspend proceeding during the time of your privilege.

Mr *Sawyer.*] If an Appeal would lie, it must in this case. If there can be an Appeal, the subject is in a worse condition for it; for one Chancellor may give away any man’s right. Writs of Error, in all ages, were brought. If Appeals, in latter ages, increased in the Lords House, ’tis no wonder; the Chancery having got most causes into that Court, which formerly were but frauds, and those but in few cases. If you say, you have privilege in this case, the Lords will say so too; and so perpetuate the privilege, and the party have no relief whatsoever. To say, that privilege began when Parliaments were short, is no argument. There is a presumption that the Commoner shall be chosen again, if he has not misbehaved himself, though not infallibly. Would go well-armed to Conference in these things; and is for *Tuesday*, &c.

Mr

Mr Sacheverell.] There is no need of that caution ; 'twas told you below, and moved above, that the Lords would proceed no farther. If the Lords are not satisfied, then they desire another Conference, and you have time to think.

Sir Thomas Clarges.] You must have some foundation to go upon, by the Lords Answer—Would have a Conference upon that Answer, and show the Lords how nugatory it is.

Sir Edmund Baynton.] 'Tis a proper time now to send to the Lords such a Message—The Lords reply not at a Conference ; they only hear your Managers.

Serjeant Maynard.] To point of privilege—Finds it not yet resolved a privilege, that a Member of the House of Commons shall be sued at the Lords Bar. He sees not how it stands with the right of a Commoner to be sued, without the consent of the House, or himself—And knows not how that man, tied to personal attendance publickly to one place, can be called to another—And whether ever there was a precedent, that a Member of yours was sent for to the Lords House, without his consent. If you make it not a privilege—Causes there are not for an hour's attendance, and many of us may be called to attend. Matter of Jurisdiction, a high and a great cause ! If this be not Arbitrary Government, to take away a man's estate unheard, he knows not what is. The word "Appeal" is very ancient—as for Murder, and in the Ecclesiastical Court. But doubts that this thing of Appeals, from the Chancery, is not higher than his time.—Would not have a sudden resolution in the matter.—Would take farther time to consider of it. But is not for Conference, till you have cleared matter of fact.

Col. Titus.] Believes *Maynard* mistaken in the matter of fact, about sending for *Shirley*—Since, all along, you have made it your privilege, and *Fagg* has answered, "he would appear according to the Lords Summons ;" he is to answer to you for that—He says, "you are not ripe for Conference"—The Jurisdiction of the Lords is of great moment, and must be considered as the importance

portance of the matter requires—But, for your privilege, your Member may suffer in the mean time. 'Tis a greater matter to prevent than to help, when privilege is once broken—Moves therefore for Conference—The matter is under consideration—And not to proceed farther.

Sir *Thomas Meres.*] Believes, as *Maynard* says, that Appeals you will not find very ancient—Is of opinion, that you are over that point of breach of privilege; but if it be not clearly expressed, would do it better—They sent you but half the Order—That of your Member, but not of their own right. By taking *Shirley* into Custody, you imply a breach of your privilege; and the House apprehended it so; else why did you take him into Custody?—Would have the records searched, and reported, with your reasons for what you do. The Lords labouring these points more than any upon you, and books written upon them. This very point the Lords once yielded us—Would have our reasons prepared, and then a Conference.

The Speaker.] In Mr *Hale's* case, after your Message was sent to the Lords, “to have a care of your privilege,” there were no farther proceedings. In *Fagg's* case, you might have had some success, but for your Member's proceeding, and appearing at the Lords Bar, which yielded the matter. You find your privileges invaded, and desire no farther proceeding. If you send such a Message, at Conference, the Lords will be upon rejoinder.

Sir *Thomas Lee.*] If you ask for a Conference first, you may come to a free Conference on the Lords Answer; but, if they begin with Conference, we shall never have a free Conference.

Mr *Garraway.*] He remembers the haste in *Skinner's* case, and you had many Conferences—We must be beholden to the Gentlemen of the Long robe, for their help in this business; other Gentlemen being not bred up to it.

Sir *Thomas Lee.*] The Lords made their Order the fifth of *May*; but *Fagg* puts not in his Answer till the twelfth of *May*; which he observes, to show you, that your Member did not obey your Order.

Mr *Swynfin.*] The Lords have entered it on their books, “That they have right to proceed in an Appeal brought against one of your Members, as in one brought against one of their own.” The Lords have issued out no Order for your Member to appear, but an Order only to put in his Answer; and the cause to go on. A Bill, it seems, was exhibited by *Shirley* against *Fagg*, to compell him to discover his title to such an estate. He answers, “he is a purchaser on a valuable consideration.” He takes the breach of privilege to be this claim of the Lords of right to judge of an Appeal—though “careful of your privileges as of their own.” Yet, withall, they tell you, “that they may take Appeals against their own Members as well as yours;” they assign a day, if *Fagg* will put in his Answer; here is no compulsion upon him; but the breach of privilege is “assigning a day,” which is, in effect, compulsion on your Member, undoubted—Not to be called to any Court—But he is not to be diverted from his attendance here, and has the same privilege for his menial servants. Why, is not this privilege in the Lords House, as well as in other places? The Privileges are more ancient than the Courts of Law, or Chancery, hundreds of years. The jurisdiction of Chancery is but late, and so must Appeals to the Lords House from thence be. There can be no failure of justice in the case, because the Cause might have been remanded into Chancery. This proceeding of the Lords is, in effect, original cognizance; taking the whole cause, which the Chancery did refuse. Your breach of Privilege is, diverting the attendance of your Member, and not referring the Cause back into Chancery—This is a Judgment not to be done but by the whole Legislative Power—Would come to such a Question, “Whether it be a breach of Privilege, &c.”

Resolved,

Resolved, That the Appeal brought by Dr Shirley, [in the House of Lords] against Sir John Fagg, a Member of this House, [and the proceedings thereupon] are a Breach of the undoubted Rights and Privileges of this House.

The House was informed, that Lord Mohun took away the Warrant (from the Speaker, to attach Shirley) from the Serjeant's Officer, Craven, violently, and detained it; the Serjeant's Officer attempting to serve the Warrant upon Shirley in the Lords Lobby.

Sir Thomas Meres.] Though your Officer might have been apprehended by the Lords in their Lobby, yet Shirley, as a Commoner, ought to have obeyed your Order. Shirley will not always be a chicken under the Lords wings: Let the Serjeant make more deputies, and take him.

Sir Robert Howard.] The Lords might have proceeded, but no one Lord can take a Warrant away from your servant—It seems that Lord Mohun will make himself judge of the matter—You ought to complain of him to the Lords.

Sir Thomas Lee.] Moves, immediately to desire a Conference with the Lords, to desire justice of the Lords against him; and would send presently, lest a Message from the Lords might intervene, and the thing be interrupted.

Mr Secretary Coventry.] If the Lobby has the same privilege with the Lords House, he knows not how you can complain of Lord Mohun for what he has done. If that place be not a place to serve your warrant in, he knows not what may come of it.

Sir Robert Howard.] The Question is, not upon the place, but for a Lord to do such an action, and have no Order for it.

Mr Vaughan.] It may make the Officer guilty, but not the Warrant void.

Resolved, That a Message be sent to the Lords, to complain of Lord Mohun, for forcibly taking away, and detaining, the Warrant of this House from the Deputy Serjeant at Arms, for taking of Dr Shirley into Custody; and to demand justice of the said Lords House, against the said Lord Mohun.

[Ordered, That the Speaker do issue forth a new Warrant to the Serjeant at Arms, for apprehending Dr Thomas Shirley, &c.]

Saturday, May 15.

A Bill was read, the first time, for appropriating that part of the Customs to the use of the Navy, which was by Act of Parliament appointed for that purpose:

The E. of *Ancram* reports, That, according to the Order of the House, he delivered the Message, but was made to stay five hours, before the Lords called him in to receive the Answer. Where Lord *Mohun* said, "The Lord Keeper called for the paper of the Message," sneering, and laughing; he never saw such a carriage.

The Answer to the Message was, "Gentlemen of the House of Commons, The Lords have considered of your Message, and the matter contained therein, and they return you this Answer; That they find Lord *Mohun* hath done nothing but [what is according to] his duty."

The Lords intimated something farther in discourse.

[Debate.]

Mr *Garroway*.] You refuse nothing that seems to have some weight in it, and you never refuse to hear it; therefore would have Lord *Ancram* declare what it was.

Col. *Strangways*.] For Lord *Ancram*'s security, you must put it to the Question, Whether you will hear him, or not?

: Sir *Thomas Lee*.] He knows not but that a Lord of our House, tho' not upon oath, may be believed, as well as one of the Lords House.

Sir *Charles Wheeler*.] You have heard an account of Lord *Mohun*'s behaviour, and merry gesture, at the delivering your Message—Should the Lords Messengers to us be turned into ridicule, some of us may be made so at a Conference.

Earl of *Ancram*.] He had no interlocutory discourse with Lord *Mohun*, but in the presence of some of your Members.

Then he proceeded to the relation of what passed between them in the Painted Chamber. "That which stuck with him was an expression,—but, before that, Lord *Mohun* came to him for the paper of his Message; to which Lord *Ancram* replied, "He would not show it him above all men, he might snatch the paper away."

away." He added, "Suppose one had a fine purse, with guineas in it, and [another] should desire to see the purse, and, when he had it, pocket up the guineas." "No," says Lord *Mohun*, "I would not do that; but would snatch away a knife from a man I feared would cut my throat with it." Lord *Ancram* replied, "Does your Lordship think the House of Commons would do so?" Lord *Mohun* answered, "Taking our privileges away is as bad as cutting our throats."

Sir *Thomas Lee.*] "Messengers from the Lords, at the door" he hears called for. He fears the Message will not please you; they have not yet staid "five hours," as the Lords made ours do. He renews his motion of yesterday, to send a Message to the Lords, to cease proceedings in the Appeal against *Fagg*—They have made entry in their books of their undoubted right in it, and have judged it privilege. 'Tis dangerous to rest so long before you do it, whilst you are disputing collateral issues about taking away your Warrant.

Mr *Mallet.*] Finds it *full-moon* with Lord *Mohun*, and moves to adjourn the House for six months, now, whilst we have neither Tax nor Test upon us.

Col. *Strangways.*] Would adjourn the Debate till cold weather, to proceed more calmly, and go upon the great business of Religion, and other concerns of the nation.

Mr *Garroway.*] At this rate, the Lords will come to be a brave Aristocracy—A strange judicature! He knows not what they would be at, or pretend to be. We have formerly been afraid of this, and now we are as much as ever.

Sir *Henry Ford.*] Is as much afraid of Democracy—Would call in the Lords Messengers.

Mr Secretary *Coventry.*] Undoubtedly you are not to put yourselves out of all possibility of reconciliation with the Lords. According to the examination of your Officer, you have cause of complaint of their Member, and it may be, on Conference with the Lords, they will complain of your Messenger; and so you may be rightly informed. Though your Messenger staid long, yet he believes

believes the Lords were not idle that while—Would hear the Lords Messengers, and then proceed.

Mr Vaughan.] Taking away your properties is not only danger, but a perfect dissolution of the Government, and this on record, a perfect Aristocracy. Our lives may be questioned by the Lords, next to our estates called in question.

Mr Sacheverell.] You having voted against your Member's attendance at the Lords Bar, you must keep your Member from being ruined, by preventing these proceedings.

Sir Thomas Lee.] Yesterday you put the word "demand" into the Message, and you should not go less to day than yesterday in the Message.

The Speaker.] Yesterday the word "demand" was in its proper place; you "demanded" justice. The word was proper yesterday.

Sir Thomas Lee.] Yesterday you "demanded" justice against Lord Moun. This is breach of privilege to day, and you may demand it as well as that. That the Lords should not proceed against your Member, you claim of right.

Sir Charles Harbord.] No use of privilege, if no right to it—A question whether this be right, or not. It may be dangerously extended, and he would not innovate at all—But not give the Lords again more than is their due, and would well consider of it.

Mr Sacheverell.] This case is different from all the rest—Would have the point of Appeal fairly debated afterwards. 'Tis not an angry thing. Would have this case of Fagg asserted.

Sir Thomas Clarges.] Appeals, in the Lords House, have been so fatal, that they have reversed decrees of twenty years standing—Would be very cautious in the matter before we proceed.

Col. Titus.] Can there be a harsher expression than "to send to the Lords to stop proceedings?" The word "desire" may be right. If I "demand" justice, many times the way of Address is as much as the thing itself.

Sir

Sir Thomas Meres.] In the case of *Skinner*, your Vote was recited, and 'tis that you must stand by in Conferences; in which Vote, when homely asserted, you may use the word "desire"—We never lose by civility.

Resolved, [as before] that the Appeal brought by [Dr Shirley] against Sir John Fagg, a Member of this House, in the Lords House, and the proceeding thereupon, is a breach of the undoubted rights and privileges of this House, and therefore this House desires that no farther proceedings may be in that cause before their Lordships.

Mr Waller.] Our old way of style is *French*, (the Commons,) *Soit baillé aux Communes*.

Col. Titus,] Knows not how grammar has offended us in this matter—The word "is", was never put to the plural.

Sir Thomas Lee.] As for Conference, the Lords are not fond of showing you the way to question their privileges. If you ask not the first Conference, you will never have a free Conference. It has been your method, formerly in the case of *Skinner*, about the *East India* company. Would have a Conference desired, about the privileges of Sir John Fagg.

[A Conference was desired accordingly.]

A Message from the Lords, "The Lords Spiritual and Temporal, [in Parliament assembled] have received a Warrant, signed "Edward Seymour, Speaker," and desire to know, whether it be a Warrant ordered by this House?"

The Warrant was for attaching *Shirley*—It was read and owned by the Speaker.

[Debate.]

Mr Powle.] Does not remember Messages sent hither, by way of Question, but proposed at Conferences.

Sir Thomas Meres.] Never heard such a Message in his life before—Would answer the Lords by Messengers of our own, and, at a Conference, would insinuate it.

The Speaker.] In twelve years sitting here, he never saw the like before.

Col. Birch.] Never heard the like at any time here, and has been here in bad ones. Would add upon matter, this Message now received—And now to answer by Messengers of our own.

Mr Waller.] The first time, in all the Parliaments he has sat in, that he has heard a Question to have been sent in Messages. Would return no answer at all.

Sir Thomas Meres.] In our Message we complained of Lord Moun's taking away our Warrant; and, in this Message, the Lords ask us, Whether the Warrant be ours, or not?

Sir Winston Churchill.] Moves to send Messengers to know, whether this came from the Lords, or no.

Mr Secretary Coventry.] This Message from the Lords, he believes, was ordered before your Messengers of the last Message, were called into the Lords House.

Sir Thomas Lee.] It appears not to you that it is so as Coventry said—if they made their Vote, they had a full answer to this Question, by our Message, before they sent away their Messengers.

Sir Edward Baynton.] We may give an unexpected answer to an unexpected question, to this purpose, “That this House has considered the Lords Message, and (if the House think fit,) will send an answer by Messengers of their own.”

Col. Titus.] Would have no sudden answer, but such a one as becomes the gravity and wisdom of this House; would have now only, “That we will send an answer by Messengers of our own,” and then consider of our answer.

Mr Vaughan.] If you received a Message 'twould be a proper answer—“Messengers of our own;” but these are interrogatories, as if we were criminal, like the authority of a justice of the peace. You commit a man to the Tower, and the Lords send to know whether you have committed him or not.

Earl of Ancram.] Observes a new thing in the Message, “The Lords Spiritual and Temporal;” formerly Messages were usual “from the Lords” only. As if the

Church

Church asked you a question—Would send an answer in few terms.

Sir *Edward Baynton.*] “The Lords Spiritual and Temporal, &c.” he supposes in the Message, because the Lords begin to catechise the House of Commons.

Lord *Obrien.*] Would have it also in your Answer, “The Knights, Citizens, and Burghesses, will send an Answer by Messengers of their own.”

Sir *Nicholas Carew.*] “The Knights, Citizens, and Burghesses, will send the Lords Spiritual and Temporal an Answer, by Messengers of their own.”

Col. *Titus.*] Why not “the Commons, Spiritual and Temporal, will send Answer, &c”?

Col. *Birch.*] ’Tis necessary to make some remark on this Message; but is utterly against answering in the common way of Answer.

Sir *Thomas Meres.*] Whether the weather grows hot, and it seems as if we were not like long to continue together, and so we make our strokes as fast as we can, (he speaks only by way of metaphor,) therefore would come as soon to the matter as we can.

Mr *Garroway.*] This Message may be entered in the Lords books, and so the word “unparliamentary;” may be of the best service to you.

Mr *Swynfin.*] The Lords had an examination upon the Warrant. *Shirley* was examined. ’Tis much more to say, “’tis unparliamentary;” for ’tis after we sent our Message. He is against adding the last words, “Messengers of our own”—You need not reserve any thing. Would have this the clear Answer, “That the matter of this last Message is unparliamentary.”

Sir *Robert Howard.*] First, to say a thing is so, and then afterwards to say Reasons! He is against it, but would give the thing a mark, without setting a bar betwixt the Lords and us—The worst logic in the world is, to do a thing, and then give Reasons afterwards for it.

Col. *Titus.*] Would have some brand put upon it, yet would not put so harsh a term as “unparliamentary”—

Would

Would have it thus, "of unusual nature, and therefore would send an Answer by Messengers of our own."

Sir Thomas Meres.] If our Answer concludes it not "unparliamentary," it must impertinent. If they ask you Conference, they will cast the force of their words upon "unparliamentary"—You are gone as far as you can go—And then not to send an Answer by Messengers of our own.

Mr Vaughan.] The Question is entered on your books—and is the proper place to be informed—Would have the latter words left out—You may, at this rate, be made common witnesses to what the Lords will interrogate you unto.

Sir Winston Churchill.] Would prove it "unparliamentary," but call it "unusual"—Would go as high in proof, and as low in words, as you can.

Sir Edward Baynton.] 'Tis "unusual," because never used before. It looks so like things formerly in the Long Parliament, that we could smell things out. But make not their proceedings the measure of yours. Would give an unusual return to an unusual Message, without harsh expressions, in order to a Conference.

Mr Secretary Coventry.] Will not excuse, nor justify, the Lords in this Message. By whom do you send this Message? Things of expostulation are not usually sent from us, in Answer, by the Lords Messengers. They have nothing under your hand. By your own Messengers send what you please.

Sir Thomas Clarges.] He that was most moderate, always overcame the more eager; as in *Skinner's case*. Would not now repell heat by heat. And you may show you are not altogether pleased with what the Lords have done.

Sir Charles Wheeler.] Would enter it upon your books, "that it is unparliamentary and unusual." And then give an Answer by Messengers of your own.

The word "unparliamentary," in the Answer, was rejected by vote, 151 to 127.

Sir

Sir *Thomas Lee.*] The word “unusual,” he thinks too little, and would have it left out of the Message.

Sir *Richard Temple.*] By course of Parliament, the Messengers should have no Answer at all. A strange thing, to send to know whether you own an Order! You send for Conference, and the Lords may deny it, being matter of judicature, which they have, and say they may do it. Would, in plain *English*, return no Answer at all.

Mr Secretary *Coventry.*] Hereafter you cannot call that “unparliamentary,” which now, in your books, you call but “unusual.”

Answer to the Lords Message.

“The Commons will consider of the Message from the Lords, and will return an Answer by Messengers of their own*.”

The Lords Messengers told the Speaker, “that they had orders to show the Warrant only, and to bring it back again.”

Sir *Thomas Meres.*] They call themselves “Lords Spiritual and Temporal, assembled in Parliament—” When we, in a Message, have called ourselves “The Commons assembled in Parliament,” there, to his knowledge, the Lords have taken it so ill, that they have given no Answer.

Sir *John Birkenhead.*] Desires *Meres* to show him one precedent, where the Lords have not entered their Orders, in those very terms of “Lords Spiritual and Temporal, &c.”

Resolved, That the Message, [last received] from the Lords, is an “unparliamentary Message.”

Managers were appointed, and ordered to draw up Reasons to be offered at a Conference, against *Monday*.

[The House being informed, that there is a Cause upon an Appeal brought by Sir *Nicholas Stoughton* against Mr *Onslow* †, a Member of this House, appointed to be heard at the Bar of the Lords House on *Monday* next;

Resolved, That a Message be sent to the Lords, to acquaint them therewith; and to desire their Lordships to have regard to the privileges of this House.

* The last Clause is not in the Journal.

† Afterwards Sir *Arthur*, Bart. He was grandfather to the present Speaker, and great grandfather to the present Lord *Onslow*.

Ordered

Ordered, That Mr *Onslow* do not appear any farther in the prosecution of the Appeal brought against him in the House of Lords; and that Sir *Nicholas Stoughton* be sent for in Custody of the Serjeant at Arms, to answer his breach of privilege.

Resolved, That whosoever shall appear at the Bar of the Lords House, to prosecute any suit against any Member of this House, shall be deemed a breaker and infringer of the rights and privileges of this House.]

Monday, May 17.

[The Lords consented to a Conference.]

[Reasons for the Conference, reported by Sir *Thomas Lee*, and agreed to by the House.

1. For that the Message is by way of interrogatory upon the proceedings of the House of Commons, in a case concerning the privilege of a Member of that House, of which they are proper judges.

2. For that the matter of the Message carries in it an undue reflection upon the Speaker of the House of Commons.

3. For that the matter of the Message doth also highly reflect upon the whole House of Commons, in their Lordships questioning that House, concerning their own Orders; which they have the more reason to apprehend, because the day before this Message was brought to them, the Warrant was owned, by the complaint of the House of Commons to their Lordships, that the same was taken and detained from a servant of theirs, by a Peer: Which imports, that the Question in that Message could not be for information only, and so tends to interrupt that mutual good correspondence, which ought to be preserved inviolably between the two Houses of Parliament.]

[Debate on receiving no more Bills.]

Mr Eyre.] Wishes the digestive faculty of this House answerable to the hands that feed it, that we might dispatch what business now may be brought before us; but because we have much upon our hands, and the time we are to sit probably not very long, moves "that no other Bills may be received, but what are already before us, or which may come from the Lords."

Sir John Coventry.] We have yet neither removed Privy Counsellor, nor broken the *French* league, since we sat. Would have Members stay here, and attend their duty,

duty, and not go down these holydays; and seconds *Eyre's motion.*

Sir *Thomas Lee.*] Thirds the motion, “that no Bills be brought in, but what are already depending, and may come to us from the Lords, [till after] this recefs,” or what the King will please to make it.

Sir *Joseph Tredenham.*] Would never tie up our hands from other busines. He never knew a precedent of it—*He being interrupted by many saying “No, No,” said, He would be answered by reason, and not by noise.*

Sir *Nicholas Carew.*] He has known this, that is now moved for, done almost every Session, and would have it so now; especially because the busines of religion may not be interrupted.

Sir *Robert Carr.*] He has known when no private busines might be brought in, to interrupt the public; but he never knew such an order made as is moved for. ’Tis very extraordinary to exclude public busines, which may be of dangerous consequence—Would, therefore, exclude private busines only.

The Speaker said] *Eyre* moved—“No new busines,” *but he explained himself, and said, “Bill”, and so did Lee the same.*

Sir *Thomas Meres.*] Anciently this motion was parliamentary, when Parliaments sat a shorter time than now—No new petitions were to be brought in. You cannot have a more advantageous thing to the Bills before you. Let such as will go down see what is before you, that no new matter may be started.

Sir *Henry Ford.*] Is glad to see the House so unanimous for Bills in your hands, but is not for this Question—Will you preclude yourselves from taking any more Bills? What occasion can you tell but you must have more Bills? You were told, not long since, your Being depends on the Address about the *French* forces; and will you shut up your hands against all possible cases whatsoever?

Mr *Vaughan.*] We are but passing a Vote, not making a Law for it. If we were, would then be of *Ford's* opinion—

nion—Constantly Parliaments have set a time for receiving Petitions, when Parliaments were shorter than they are now. The King has pointed out to us Religion, and Property, and Safety. We have let others in, and that out, by new business; and is the more for it, by what he has heard abroad of our sudden recess. Therefore moves, “that all Bills we are not already possessed of, or may come from the Lords, may be excluded.”

Sir Charles Wheeler.] Should not have been against the motion, had you said, “till the Bills before you were finished, no new Bills should be brought in.” If the King adjourns us not yet, or we sit six months, will you sit still, and do nothing? The precedents of 1641 and 1642 may be brought up an hundred years hence, like the nineteen propositions—Are we not masters of our own sense and resolutions? The Vote is altogether needless.

Sir Thomas Lee.] Moves to Order. After the motion firsted, and seconded, to tell you of “adjourning,” and “the nineteen Propositions in 1641 and 1642!”—Would have no resolutions.

Sir Thomas Meres.] We abominate the actions of 1641 and 1642, as much as *Wheeler*; though he is not so old as *Wheeler*, our ancestors have suffered as well as he; abominates “the nineteen Propositions” as much as he, or any man.

Mr Secretary Coventry.] To say, positively, not to receive any thing from the King, we know not how such a thing may be. He has no foresight of any thing that may come from the King. The thing is too much unprecedented, and, whenever done, it ought to be with great deliberation. Pray God, our difference with the Lords may be happily composed! He should hate himself, if he did not desire it. 'Tis not easy to see an accommodation with the Lords, but by a Bill, and possibly more natural for us. We are not yet prepared for matter for so good a Bill, but the Long Robe may adjust your privileges; and is sure it would be prejudicial to your reputation, should such a Bill come from the Lords. Why should our hands be bound? We are in a profound

and

and safe peace, by God's providence—Who knows but there may be a necessity of the very safety of the Government, by loss of battles abroad, and other contingencies?—Would not presume upon God's providence, so much as this Vote will.

Mr Swynfin.] The motion is, “That no new Bill be received, other than what shall come from the Lords”—What is moved hinders no Bills from the Lords. If any thing should be extraordinary, as the miscarriage of a battle, mentioned, you are secured by the Vote not excluding Bills from the Lords, and you are free—But here is your danger, a custom of receiving new Bills almost every morning. So many Bills make your Committees diverted; and scarce a new Bill, but the Committee is called from the attendance of the former Bills. He has observed of this Parliament, that there were never more explanatory Bills. This motion is not to tie up your hands, but not to stretch them so, that busines may fall from you by grasping more; having already several Bills, that cannot pass this Session, of great importance, and like to have long Debates. There may be an emergency, and 'tis supposed only. If you take more Bills upon you, you cannot pass many before you. 'Tis a reasonable motion.

Sir Francis Drake.] If this difference between the Lords and us be accommodated by Bill, *Westminster-Hall* must judge our privileges, which, he hopes, he shall never see. They say abroad, that the King of France will not go into the field till this Parliament be up, and for that reason he would not lengthen the Session.

Sir Thomas Clarges.] 'Tis a necessary motion, not to exclude any thing from the Lords, and is for the motion.

Col. Titus.] 'Tis reason, that the Bills before you should not be obstructed, till they shall have their doom; possibly something as necessary may happen as any thing already before you—'Tis answered, “it may then come from the Lords.” Supposing the Lords have such notice,

tice, they may make such a Vote likewise. It may be of dangerous consequence.

Mr Hale.] Considering the time of the year, and the little yet done, must leave other gentlemen to find a reason for it, he cannot hope to do it, how to be dispatched.—He fears a thin House, this festival calling people out of town—And if a motion should be for a million of money, here would be few to maintain the battle.

Sir John Birkenhead.] Suppose the King should send us an Act of Indemnity, he should be loth to lose his share of it—Will you tie your hands against receiving it? A gentleman said, “he heard the King of France will not take the field till we rise;” therefore he would sit on. The thing has an ill aspect—He would have precedents for it.

Sir John Talbot.] You are offered arguments for this motion, which are strong reasons against it, “Members going out of town.”—Is, therefore, against the motion, because it will keep Members here—But would have the word “private” added to “Bill.”

Mr Waller.] Reflects upon the first Debate this Session, about Thanks for the first part of the King’s Speech. As to our Religion and Property, we gave Thanks. Wonders that any thing should be insinuated, when the King called us for nothing else. The Ordines, or States, were never made to adjust differences among themselves, but left commonly, as most cases,—*Consuetudines*—We say, “we will not exclude the Lords”—They may imitate us, but remembers not, when no money asked, and in hot weather, we were kept long together. When men go home, and there is a fear of surprize, he thinks, the last Session, there was such a Vote as this. Would one see the growth of Popery hindered, though we pay money for it? We paid 400,000*l.* for the Test against Popery; and now the King asks more; we may well put the vote proposed to the Question.

Sir Edward Dering.] This is an unusual vote proposed; would see one such vote that ever passed—Remembers only something like it, when our days were

num-

numbered. He usually gives his negative to what he understands not—Would willingly have some consideration of it. If it be a good Vote, 'tis a good one two days hence; and would adjourn the Debate to *Wednesday* next.

Mr Powle.] This Vote proposed does not so oblige, but, that, if any extraordinary thing come to pass, we may revoke it. Had we put Popery, Property, and the Fleet, in any way, we might have come to such a Vote, in obedience to the King's Speech. What can be done by Bills is already before us; to admit more, is but to incumber those. This seems to him to be perfectly the state of the Question, whether we shall do any thing, or no? Therefore he concurs with the motion.

Mr Pepys.] The little he has to say, is, to join with Powle about the Navy. How far Religion and Property are secured, he knows not, because he has not seen the Bills. In his humble apprehensions, the Navy is not provided for. He takes his rise from the Bill for appropriating the Customs; if what he said the other day be true, and [he] can make it out, that there is yet no provision made out for it. If 400,000*l.* be no superfluity, to make this fleet of yours equal to what it should be with your neighbours—plainly, in view, 'tis necessary, indispensably—To the value of the bill, then, have you complied with the King's Speech? For all this is but necessary to keep the fleet as it is.

Mr Secretary Williamson.] Pepys has told you the present state of the stores, and not what must set the fleet, abroad besides the *Tripoly* war.

Sir Eliab Harvey.] As for the great war of *Tripoly*, he hopes we are in a better condition than not to maintain six ships for that war. He told us, 195,000*l.* would set out the fleet for eight months; therefore, that is provided for—Many Bills may lie here, possibly, till October—So many Committees are on foot, that, should we sit to October, say we should, we must have time to go into the country.

Mr Pepys.] 'Tis not for your service, nor the Government, to let go an error uncorrected. 'Tis to no

purpose to deliver it in writing; 'tis not capable of mistake. Expressly, all particulars have been told you, but not one syllable of wages. When he has exposed his papers, would appeal to them.

The Speaker.] When Sir *Henry Ford* was called down [to Order] for speaking the same matter, he said, "he must speak what he said before, for want of other matter."

Mr *Garroway*.] *Ford* called him up, by saying, "No money was asked nor desired." And as for *Sandys's* motion of the chimney money's being taken off, he is against it—When he remembers that the fee-farm rents were sold by forty-four voices—When all agree nothing is asked, nor expected, where is the prejudice? If he thinks the Bill of Popery and Property will not do the work, he may offer amendments, if he please, and no danger in the vote, as is said.

Sir *John Ernly*.] In chimney-money, he said heretofore, that the Parliament was to give, and not to take away from the King—The strength of your neighbours is recommended to your consideration; if you think yourselves in a good condition to oppose your enemies, on occasion, 'tis well. Estimate the *French* ships, built but of late years; but he has built eight great ones, since. If you think we are fully provided for, and no need of building more ships, when seven or eight of the first rate must be built, he says nothing; if all be well pleased and contented, to let things be as they are, so is he.

Mr *Harwood*.] Is sorry the Crown of *England* has gone so far backward, as *France* has gone forward. We hear of the ill condition of the navy, but not of the good. If we ought to be afraid of the *French*, by sea, or land, why do we suffer our men to stay there? As to the navy, so considerable to us, when our wooden walls are down, every one may come at us. The *French* having so admirable navies, and we so poor ones—which might have been otherwise, if all the money given to that purpose had been so spent. If that which you have appropriated

to

to the Navy will not do, you may think farther of it, when you meet again. He concurs with the motion.

Mr Sawyer.] Here is a great Debate. For fear of confusion on one side, and surprize on the other, moves to have no more Bills brought in, after the first day of the next term. It is for the interest of the King to finish those before you; and he would have a convenient time set, for bringing in any more. The surprize of the passing the Bill for the Fee-farm Rent—Great defect followed. A convenient time set to limit the bringing in of Bills, would salve the doubts on both sides.

Mr Finch.] We ought not to put the Question, to prejudice any other business; we have not yet proceeded sufficiently for that. We are not to exclude Property, by Petitions from private persons, that cannot have remedy in another place. He has received many particular papers; he calls them so, because delivered to him by particular men. Trade respects Property. The Motion about Trade, for planting flax in *England*, is public, because it saves 800,000*l.* a year for coarse cloth, brought from beyond the sea—Religion ought to have the first place in your thoughts; but he moves that last, to rest it in your thoughts the better—The last Session, you considered of Indulgence; and because we are safe on the shore, shall we have no consideration for them who struggle with the tide? Whatever the case be, 'tis charity and prudence to think on them, so considerable a part of the nation; and would not have them in despair.

Sir William Stroude.] A predecessor of his, in *Henry VIII.*'s time, had a particular Act for him, called “*Stroude's* Cafe.*” He hopes he shall not be debarred his property, having lands taken from him, for the making *Plymouth* fort larger, and was never considered for them.

Sir Thomas Littleton.] All these things will be provided for, as well as any great matters have been provided for. The expence, we are told, of the Navy is 400,000*l.* per Ann. one year with another. Of late years we have

* See Vol. I. p. 37.

had a *Dutch* war, or have been sore of the wounds by it. Always an old debt remaining (though he hears 'tis in some measure paid)—The first-rate ships are built; and no man can say, that the current charge of the Navy is *400,000 l. per Ann.* therefore the Custom Bill is sufficient for that purpose. There are several precedents, and right, at a time for such a vote, when our days of sitting have been numbered—When we have had a prospect of a recess, we have excluded private business—But, 'tis said, for public, who knows what emergencies may happen? The argument is the same for the one as for the other. Should we not stop business, we should keep the door so open we should never have done; and for what is already before us, we shall never have a greater prospect than we have now.

Col. Birch.] Hearing gentlemen have told you, “We shall give no money” (which is more than he knows)—He seldom gives his negative to money, because he has the least of it. If you bind not your own hands, he would not let others bind them for you—if the King’s protestant subjects were united, he would not fear the great man beyond sea. For Flax, 'tis past time of the year to plant it—'Tis but a dwindling sum, spoken of, for the Navy—but he would have such a Navy as has never been, and not by money and wares upon interest—the Navy wants men—he sees not so absolute a necessity of fear of the great man beyond sea, 'till we see how we stand with him in the Treaty—and seeing, he that moved once for money did so well with it, and the Navy so ill, would stop, and consider it.

Sir Charles Harbord.] 'Tis not time now to save your time, nor your money, though there is a time for both. He is against the Question, but desires admission of no more Bills, 'till the great ones are in a fairer progress.

Mr Secretary Coventry.] Would have this word added to the Question, not foreseeing what great occasions might come; for extraordinary occasions alter all orders; therefore would have the words, “unless upon extraordinary occasion,” added to the Question.

Sir

Sir Robert Howard.] "Which the House is judge of," and would have that added to the Question.

Col. Titus.] It seems, a design is suspected for money; he clears himself, he knows none. He is for Coventry's motion, with the addition.

Mr Vaughan.] Should any great occasion come, the ruin of the nation cannot follow, but in the manner of our dismission, if, by prorogation, the King cannot call us again; if, by adjournment, 'tis held, by many, he may call us by proclamation.

Sir Thomas Lee.] The Speaker said, "He cannot take the Question from any particular man;" but when one, two, or three, have delivered you the very words in their speech, you are to put them to the Question.

Sir Charles Wheeler.] 'Tis not possible to arrive at the King's intention, if this vote be pressed ready coined—Would know how the King would explain that expression in his Speech, "against the minds of men," because we cannot interpret—He explains himself upon the word "ready coined," as a metaphor only—Then speaks of what has been used this Session, in penning Questions.

Sir Thomas Meres.] Writing the Question is the best service for the House; they are the very words proposed by the first man that moved it.

Sir Richard Temple.] If the House hold not to the Question, 'tis the Speaker's duty to collect the sense of the House in the Question, and he would have the word mentioned, but not the word—in the King's Speech.

Mr Swynfin.] Rises to speak to the words, "extraordinary occasion," proposed to be added to the Question. "If the extraordinary occasion be from abroad or at home," must be meant, which this House has no prospect of now. It will be private interpretation in this case; it will occasion, no man knows how many motions and interpretations, a man's own way, and give interruptions to your business, and he is therefore against the words being added to the Question. Of two inconveniences, the greatest is to be avoided—if

any man thinks that, by it, he has excluded all extraordinary things, the House is the judge of that only.

Sir Thomas Lee.] Has heard, in former days, when the army men were in parliament time, they gave money, and gave it to themselves. We that live about the town shall be the only judges of it. The rest, that live remote, will have no share in it; therefore is against the addition.

Sir Richard Temple.] Thinks you sufficiently armed against these "extraordinary occasions." Your vote itself will give you liberty sufficient—'Tis only a tryal, whether any man will offer you any thing extraordinary, or not.

Mr Hopkins.] Remembers that the last Tax was, "for the King's extraordinary occasions."

Sir William Coventry.] He has the less to say, because his sense is already expressed—The word "extraordinary" is not only useless but dangerous; as if the House, without those words, was not masters of their own orders. Should be loth that it binded us up so as not to alter it, either on some great victory obtained, or new occurrences.

Sir Thomas Meres.] Whenever a necessity comes, that is for our advantage, or the nation's, it will over-rule all orders—Believes that no-body that urged the Question intended those words.

Mr Secretary Coventry.] The word "necessity" is always avoided in this House; and would have it so now.

The word "extraordinary" in the Question, was rejected, 169 to 121.

The main Question passed, *viz.* "That no Bill be brought in, or received, but such as are always ordered to be brought in, or shall be sent down from the Lords, 'till after the recess mentioned in his Majesty's Speech."

Tuesday, May 18.

[An engrossed Bill from the Lords, for explanation of an Act, for preventing dangers which may happen from Popish recusants, was read the second time.]

Mr

Mr Secretary *Coventry*.] The Bill, as it now stands, seems to be to prevent inconveniences that may arise from the growth of Popery. As the Test is penned, if a Master of Arts take it at his commencement, that shall suffice, and he need not take it again, if made Archbishop of *Canterbury* thirty years after; and then he may be a Papist.

Col. *Titus*.] The greatest inconvenience, in your former law, this Bill omits. Chargeable offices may be excused, by not taking the Test. As Sheriffs, the case of Sir *John Read*, in *Hertfordshire*; therefore would have that taken care for, in the Bill, at the Committee; and from a small office to a great one, as you have been told.

Sir *Edward Dering*.] Generally, an explanatory Act to that Act mentioned, has been wished for in his county. Many able persons have laid down the Commission of the Peace, for the doubt of this Act, that those that have once taken it, are obliged to do it no more; but he thinks that to be no objection. Persons not obliged for the same office, *toties quoties*, to take the Test.

The Bill was [ordered to be] committed.

The Answer from the Lords, reported by Sir *Richard Temple* [who had carried up the Message in the case of Mr *Onslow*.]

"The Lords do declare, that it is the undoubted right of the Lords, in judicature, to receive and determine [in time of Parliament] all Appeals from inferior courts, though a Member of either House be concerned, [that there may be no failure of justice in the land] and from this [right, and the exercise thereof, their Lordships] will not depart."

[Debate.]

Sir *Thomas Lee*.] Thinks that the Long Robe are not better judges in this matter than ourselves, how far you can agree to their right upon your Members. The Lords asked your Members, the last Message, for their Reasons—Would have a Conference sent for to the Lords, and there would give your Reasons—Would have the interrogatory assertion of the Lords entered in your book; but he sees no reason that your Members should be more drawn to their Court, in time of Privilege, than to other

Courts in *Westminster*. Moves to have the Vote of the House read; which was,

"That it is the undoubted right of the House of Commons, that none of their Members be summoned to attend the House of Lords during the Sitting; or Privilege, of Parliament."

Sir *Richard Temple*.] You cannot have any farther Conference with the Lords in this matter, than you have had already. As for this of Mr *Onslow*, "They will not depart, they tell you, from the right of taking Appeals." Sees not how they can deny you a Conference generally,

Sir *Thomas Clarges*.] He sees the Lords have taken no notice of what you sent them at the Conference; for their taking Appeals from Chancery, what fruits of *Magna Charta*, or Freehold, have we, when, by a paper Petition, the matter is brought to the House of Peers to be judged?

Sir *Nicholas Carew*.] Desires only, for the present, to assert your privileges, and secure your Members from being called from their attendance here. The cases of Appeals may take up the whole business of a Session, but, in time, may be rightly understood.

Mr *Powle*.] Granting that the Lords have this jurisdiction of Appeals, yet they have it not upon your Members. Their attendance is as necessary here, as the Lords in their House; and they are called from their attendance here, as well as if they were sued in *Westminster-Hall*. Their Answer is very unparliamentary—Proposes, as his opinion, to demand a Conference, on our privileges, with entering a salvo, "that you do not, by that Conference, bring your privileges in doubt."

Mr *Sacheverell*.] Your right of privileges is easily asserted, without the help of the Long Robe, which he would first assert—Moves, "That the assertion of the Lords, in their Message, may be voted contrary to the rights and privileges of this House, from which we will not depart."

Sir *Thomas Clarges*.] The last part of the Lords Message is a vote of the strangest nature he ever observed: "From which they will not depart." This is fatal to

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Monarchy. He knows not where such an assertion may end. The King is pleased to take our advice, and redress things—Will they assume greater authority than the King did in the Declaration? This is language like a high Court of Justice asserting their authority.

Col. Titus.] For things apparent we need no farther information. You have your privilege given, not to be drawn from attendance of this House. Why should there be a failure of justice, as alleged? Acts of Parliament may help it, and petitions to this House. As the Lords say, so let us, “That it is the undoubted right also of our Members, that they cannot be called from their attendance here to any Court whatsoever, from which they will never recede.”

Mr Powle.] Eternity of place is as strong in the House of Commons, as in the Lords House; though not to our heirs, yet to our successors. He has heard, that Lords * have wrote letters, that they are weary of us. It seems, by these proceedings, they are so. If the Lords must call us to their Bar, by receiving Appeals against us, we are under their command—Would assert our rights, as they have done theirs.

Mr Secretary Coventry.] At that rate of positive assertions we are at, we shall never meet at a free Conference.

Mr Swynfin] 'Tis good that the Lords have Appeals from Chancery—It would be worse to have them under the determination of a Chancellor, or in a Judge's breast; much better under so many Judges in the Lords House—And farther, they say, “They have such a right, though a Member of yours be concerned.” They imply it over your Members, though not directly express it—Not expressed in their Answer, plainly; they do not *in terminis* deny, though, in the consequence, they involve Members—He fears you will not have a Conference—You have sent for Shirley in Custody.—*Called to Order by*

Sir Thomas Lee.] He applies his argument to Fagg's case; and your Debate is to the Answer of your Message yesterday.

* Lord Shaftesbury's letter.

Mr Swynfin goes on—If any Court proceeded against your Member, the way is, not presently to proceed against the party that brought the suit against him, but against the officers that summon him to appear. Your Warrant was to bring *Shirley* before you. The Lords would know whether you granted such a Warrant, or no. You have prepared Reasons for Conference, singly, from their individual power over your privilege, only. Possibly that Conference may give some farther inlet. This is a Question, whereof never Debate was before; he finds and knows nothing of it. It being a new Question, 'tis some inducement for the Lords to hold it strongly—The practice has been where silently the thing has passed over. Now there's an universal Appeal, by frequency of Parliaments; the Lords House becomes a standing Court over the Chancery, which could not be when Parliaments were short. As 'tis a new case, so this case must be determined on the common right of the House; not to be diverted from attendance, on any Court, in any cause. A general right—Laws have provided, that country and kingdom are concerned in the attendance of the Members, and they are not liable to any diversion. That being the reason, why not as good to be diverted to the Courts of *Westminster*? Some reasons the Lords must show, why the attendance of your Member must be in theirs, more than in other Courts. They cannot be Judges—Never heard of a superior Court in our own privileges—The reason is the same as in all other Courts. It must come to the remedy of a law; they having no judgment over you, there can be “no failure of public justice,” but a private Act, in a particular case, is not to be preferred before the public justice of the nation. You send a Message, for a Conference about *Shirley*'s proceedings against *Fagg*, which they cannot deny you—By way of Answer to their Message, thinks it better to stay till you have an Answer in that, before you farther proceed as to the general matter.

Sir Henry Ford.] *Mei judices et adversarii.* Thinks it would do well, that the Lords judge of our privileges, and

and we of theirs—We are afraid that will happen, which was never done before—By impeachments at the Lords Bar, you may draw out all their Members—As in Lord Strafford's case—Abroad you think you have the worst end of the staff, and would have you well advised in what you are not able to maintain.

Sir Nich. Pedly.] As to privileges, many Members that are Country Gentlemen know them better than those of the long robe. As to this case—One said, “There's never a precedent”—Then sure 'tis an innovation. The Lords privileges must be grounded on their jurisdiction, as a Court of Law, but never as a Court of Equity, which must be either by Act of Parliament, or long prescription. Causes in Chancery have their gradation by error, but never by paper-bill. Anciently the Chancery judged according to Law, having had the assistance of the Judges. It never judged arbitrarily, but sent down to the Judges—in course of Law. First preserve your privileges, and then go on to consider your Address by Conference.]

Sir John Trevor.] “The Lords deny privileges to their own Members, why then not to Members of the House of Commons,” is the Lords argument. The Lords are perpetual, and privilege attends them, and they are in Parliament for ever—Privilege here is but accidental. A man has no assurance of himself, or his son's being here, upon a new call of Parliament. Privilege *contra legem* is void, the privilege of the Commons is not *contra* but *præter legem*. Commons have had privilege against the King, (with reverence speaking it) unless an accomptant or an immediate officer of the King's. Moves for Conference.

Mr Vaughan.] If he sees any thing, these questions are as dangerous to the Government as may be; your business is barely the case of privilege, and so only you are to consider, whether any thing can divert your attendance here, when the lives, and liberties of the people you are to represent, are at stake. By the King's Writ, your attendance is your right, and 'tis highly penal to neglect

neglect it. 'Tis against common reason at one and the same time to be in two places, at once, by the King's Writ. 'Tis against Common Law, when a man is in public employment abroad, *in partibus transmarinis*, not to be sued. He cannot serve abroad, and have his private fortune ruined at home; there's the same reason for Parliament attendance. These privileges are essential to you, you are to judge only; when they come under other rules to be judged, they cease to be yours. We never yet had any questions asked us by the Lords, by way of message, before. For their argument of "failure of Justice," that may extend, that the Lords shall make law only. The Lords say, "they will stick to this privilege"—You may assert your privileges by Conference, and, if that will not do, he shall hereafter propose another expedient.

Sir Thomas Clarges.] We think our security good in the Lords House, it may be, because the judges are there—The Lords say, "There will be a failure of Justice if we do not appear." But they cannot imprison one of our Members, in any case, and then they cannot execute their judgment—Here will be "a failure of Justice."

Mr Waller.] Doubts whether the words, "in criminal matters," will be safe for us to use—if, upon occasion, a great many of our Members, should be sent for away, under that pretence—Would have the vote, "in all civil causes only."

Sir Thomas Meres.] Our business is with lands only, that court dares not meddle with our persons—Would have the words, "other courts," put out.

Sir Thomas Lee.] In case of impeachments, a Member may be sent to the Lords bar.

Mr Powle.] Answered him— That the Member is first suspended his attendance here, before you impeach him.

Resolved, That it is the undoubted right of this House, that none of their Members be summoned to attend the House of Lords, during the sitting, or privilege, of Parliament.

Sir

Sir *Thomas Lee.*] The Lords have answered, “that Lord *Mohun* has done nothing but his duty,” that is, to take away your Warrant from your Messenger; the Lords have examined the matter, and find it otherwise than you represent it; but never tell you so—This still entangles the matter.

Sir *Thomas Meres.*] Your Serjeants and Deputies are threatened to be taken into custody by the Lords; we shall defend our Lobby, he believes. They know we are angry people, more than we used to have been, with them. Some of our reasons are poignant, and he would go through with them, and have our right, in chace of the main points, without so many things on foot.

Col. *Birch.*] 'Tis easier to fall out, than fall in again. He thinks you have the clearest matter before you that can be; some reasons you have before you, and would have you add more. If in any thing you have advantage, 'tis in that Catechistical Message the Lords sent you. The House goes safe ways in Conferences, and Messages; bye-ways are to ask questions. If he meddles, he would be pretty sure in what he does—Proposes farther reasons against to-morrow—When we shall be a little acquainted, by Conferences, he hopes something of good may come of it.

Sir *Thomas Lee.*] What *Birch* says, was considered at the Committee, which concluded that might be delivered at a Message, which might be at a Conference.

Sir *Thomas Meres.*] For matter of fact, betwixt the Lords and us, we may look into one another's books—There's some punctilio in the Warrant the Lords might not know, but must be acquainted with at Conference.

Col. *Birch.*] The Message from the Lords, is, “to know whether the House ordered that Warrant, then on your books.”

Sir *Thomas Meres.*] A Warrant is on your books, but not that Warrant.

[Resolved, That a Conference be desired with the Lords, on their Answer to our Message, concerning Lord Mohun*; at which Conference the vote, *viz.* "That the Message from the Lords about the Speaker's Warrant, is unparliamentary," with the reasons of it, were delivered.]

Notes taken from the Counsel that pleaded *Chester Election*,† between Col. *Werden* and Mr *Williams*.

Burgeses are $\left\{ \begin{array}{l} \text{By Patrimony,} \\ \text{Purchase,} \\ \text{or Service.} \end{array} \right\}$ *Burgeses of Parliament for the City of Chester*, 34 H. VIII. Was the first grant of returns at all times, when any Debate has happened, from Queen Mary's time to this time, *cives urbis* the only persons to make the return, and particularly their mysteries and trades—Sometimes, *Majores et cives*.

Cives, is the literal exposition for "All Men"—"Pro se et communitate prædict." is the return of the 18th of K. James.

The 23 H. VI. recites that of H. V. "resident, in Cities and Boroughs."

Wednesday, May 19.

[An additional Bill to prevent the growth of Popery, was read the first time.] Heads of it.

"After conviction, a Commission to issue out for the forfeiture, and to vest the forfeiture in several Commissioners, to value and seize the estates, &c. The Commissioners may have resort to the Courts where the conviction is made,—to levy the forfeiture—And they are, at the Summer Assizes, to chuse a Treasurer for the Money; and, if he runs in arrear, the Commissioners are to answer it—Allowance to the Treasurer, and Clerks, and Commissioners service, out of the forfeitures; with which forfeitures they have power to purchase Impropriations, for the relief of poor Vicars. The Commissioners incorporate.

"Justices have a right to punish Constables, and Churchwardens, for neglecting their duty in presenting recusants, and may reward such as do their duty—The Commissioners may issue process to the Constables, and Churchwardens; not to be removed, reversed, stopped, or discharged any way—Recusant not to be double charged, and may appeal—if a Commissioner be sued, and no damage recovered against him, he shall have double

* In the Journal, one Conference is desired, "on the privileges of this House, contained in the Lords Answer to the last Message, of this House, in the Case of Mr Onslow." And another, "on the subject-matter of their Message concerning the Warrant for apprehending Dr Shirley."

† This must have been in the Committee of Elections, no mention being made of it in the Journal till May 26, when the Report was made.

costs.

costs. If the recusant subscribes to his estate, shall be discharged. Provision against fraudulent Conveyances. Owning and advising such Conveyances to be maintainance. No convict recusant capable of gift or legacy. Members of both Houses, not taking the Sacrament, according to the Church of *England*, disabled from sitting. Any man discovering another that shall fay Mass, to be rewarded."

[The Bill was ordered to be read a second time.]

The Bill for appropriating the Customs to the use of the Navy [was read a second time.]

Mr Powle.] Queen *Elizabeth* farmed the Customs for 40,000*l.* *per Ann.* never for 50,000*l.* King *James* farmed them for 160,000*l.* The great abuses, and diversion of the uses of them, for the Navy, are the Pensions paid out, and the petty Farms. He knows not any reasons why the public money should be put to private services, though ever so great. In time, such Pensions may swallow up the whole revenue. The charge of the Navy will increase, as long as the King goes to market upon credit. Another thing is, debts, and charges must be considered. Men will not venture much on the thread of a single man's life, though all the prayers of the nation are for it. The tallies of anticipation, as if money was actually discharged and paid, a custom newly brought in, and very unduly. The Bill, he hopes, may be for the safety of the King, and is sure it will be for the satisfaction of the people.

Mr Sawyer.] In *H. VI.*'s time, actions were brought against the Customs, for non-payment of their Farms. Tallies of anticipation are not so strange—Struck on the receiver, before the revenue comes in, in a fictitious payment, done time out of mind.

Mr Waller.] We speak now only of what we have given to the use of the Navy. It's said, "These anticipations are vile customs, ancient customs." It may be as ancient as the Common Law.—We made a fund at *Oxford*, and many put their money into the Exchequer upon it. This is the difference; that was ~~pass'd~~ in the preamble in the statute, and this Bill lays a penalty. Sir *Robert Long* was solicited by some of the Ministers
(not

(not those now) to violate the Exchequer, as has been done since, but he would not. There is no nation in the world but has had money devoted to public uses. The *Romans* had so—Their ships were burnt by the *Gauls*, as ours were by the *Dutch*. In the castle *St Angelo*, is devoted money now—Knows not how the Pope makes bold with it sometimes. When the *Oxford* Act passed, you were not told of the King's wanting his dinner, for this Custom-money, as you are now. 'Tis strange, that the King should eat up his Navy. Moves to have the Bill committed,

Which was done accordingly.

Thursday, May 20.

Sir *Thomas Lee.*] Reports the reasons to be offered at the Conference on the Lords Answer, in the case of Mr *Onslow*.

1. That by the laws and usage of Parliament, privilege of Parliament belongs to every Member of the House of Commons, in all cases, except treason, felony, and breach of the peace, which hath often been declared in Parliament, without any exceptions of appeal before the Lords.
2. That the reason of that privilege is, that the Members of the House of Commons, may freely attend the public affairs in that House, without disturbance, or interruption; which doth extend as well to Appeals before the House of Peers, as to proceedings in other Courts.
3. That by the constant service and usage of Parliament, no Member of the House of Commons can attend the House of Lords, without the especial leave of that House, first obtained; much less be summoned, or compelled so to do.
4. If the Lords [shall] proceed to hear and determine any Appeals, where the party neither can, nor ought to attend, such proceedings would be contrary to the rules of Justice.
5. That the not determining of an Appeal, against a Member of the House of Commons, is not a failure of Justice, but only a suspension of proceedings, in a particular case, during the continuance of that Parliament, which is but temporary.
6. That in case it were a failure of Justice, it is not to be remedied by the House of Lords alone; but it may be by an Act of Parliament.

Mr *Wild.*] Would have added to them, “ That no Court has power to summon any part of the legislature.”

ture." The Lords were a Court of Parliament before they were a Court of Judicature.

Mr Waller.] Thinks that would be a better argument at a free Conference, than to be now amongst our Reasons, in the paper for this Conference; and then *valeat quantum valere potest.*

Col. Birch.] Would have it by way of reserve at a free Conference.

Sir Thomas Lee.] The Committee was more employed to receive Reasons from Gentlemen that offered them, than to find Reasons.

Mr Vaughan.] Would rather show these Reasons, at this Conference, than reserve them for a free Conference, because it may be we shall never have one.

Sir Thomas Lee.] Offers directions for the managers of this Conference, not to intermeddle with the Lords jurisdiction of Appeals, nor to own a right in them to take Appeals, but barely this single question, to state Privilege, neither affirming nor allowing Appeals.

Mr Powle.] The Lords Message is so general, as, if they take Appeals, by this assertion they may draw all criminal causes before them whatsoever.—An Appeal may be made to the Lords, and they try over again. That of Chancery ought well to be considered. By this unlimited power of taking Appeals from thence, all estates may be judged there, dismissed in Chancery, for want of proof, or want of jurisdiction. He is not willing to have intricate quarrels with the Lords. In this Conference would have nothing said to corroborate the Lords Jurisdiction, but to let it go over *sub silentio.*

Sir Richard Temple.] There never was any Appeal from the Star-Chamber sentence, or the Ecclesiastical Courts, to the Lords. This vote is as if they would assume Appeals in every Cause, it goes so far. In the Commission of Sewers, there is no Appeal to the Lords, nor in the Bill of Conventicles.

Sir John Birkenhead.] Many Appeals are in the Records from the Star-Chamber, Ecclesiastical Courts, and

the Cinque Ports, to the Lords House, from *E. I.* to *E. IV.* From Ecclesiastical Courts, and all Courts where the party grieved craves leave of the King, to appeal to the Lords; but Appeals from the Chancery are no higher than from *H. VII.*

Sir Nicholas Carew.] When you send up these Reasons, you deliver them with some authority. Would not now touch upon the right of Appeals in general, having no direction nor order for it. Moves to have some Members to prepare for a free Conference of this Debate.

[Ordered, That it be referred to the former Committee, to prepare and bring in a Clause to-morrow morning, on the Debates of the House.]

Friday, May 21.

The Bill of Popery * was read the second time.

Mr Waller.] To swear to Transubstantiation, when no man knows what it is!—Swearing is like a lump of gold, the prettiest thing in the world; beat it into leaf, and you may blow it away—He likes not a swearing man, nor a swearing nation—Those that swore, took away the King's Crown, and those that swore not at all, set it on again. Now you trust the people with oaths, whom will the people chuse again? It may be, such as care not for oaths, men of tender consciences, and so you may fill up the House with such as care not for oaths, and will keep none. For God's sake, impose no oaths.

Sir William Coventry.] The Clause, in the Bill, relating to the Queen's servants, may receive a temperament.—Those about her already, may continue still. The thing may be uneasy, and grievous to her else; but, for the future, would have no *English* Papists about her. He believes that most of them are already removed. Though the King of *Spain* would have (in the Treaty in *Rushworth*) both *Spanish* and *English* Priests about the In-

* In the Journal it is called, "The Bill for hindering Papists to sit in either House of Parliament."

fanta, yet the King of *England* refused. He would have none *English*, but by his consent—To answer Mr *Waller*, if we agree in interpreting “multiplying of oaths,” they agree as to the thing—He is not for multiplication of oaths.—’Tis to no purpose to bring in every new Clause that has new niceties—Would keep to that of Transubstantiation—They that take it, believe it not to be an oath.—Is of opinion, that nothing should fetter the Legislators, when they are here—No man would have Papists, Legislators—Would only have it reach this place, as it keeps those men out, and assures you those to be right that are here. It gives testimony of the Legislators, that the people may be satisfied with our trust. He is for the former oath rather than vary upon new circumstances.

Mr *Garroway.*] Agrees against multiplying of oaths, but not repeating oaths—He likes not dubious tests. It may possibly make the people think of what they never did before. He differs from *Coventry*, in the allowance of the Queen’s servants that she had formerly, but he would direct the Committee, that the Bill should not give leave for more *Portugal* servants than are already, and not to name “Papists,” which would give countenance,—but only “*Portugal* servants.”

Sir *Nicholas Carew.*] There are daily dispensations for all oaths from *Rome*, so would still make new oaths, before these dispensations come over.

Mr Secretary *Coventry.*] Every man may interpret an oath how he will, but an oath, by Law, cannot be interpreted, but according to the intention of the Legislator. He that believes no Transubstantiation at all, may as well believe a Transubstantiation. They that believe bread and wine may make flesh and blood, may believe it to be turned into flesh and blood.

Mr *Powle.*] The Papist believes change of substance, where the accident remains. If it be, as *Coventry* says, the difference between the Papists and us will only be, they believe Transubstantiation, and we believe it not.

Sir *Charles Wheeler.*] Some good Protestants have lost

some good places, for not declaring Transubstantiation, according to the late Act. 'Tis necessary that the Bishops should form this oath. Our Successors else, not knowing our meaning, and not here present, may very well stumble at this oath.

[The Bill was ordered to be committed.]

The Answer delivered by the Lords, at a Conference, May 20, [to the Reasons of this House, delivered at a former Conference.*]

[Reported by Mr Powle.]

"The Lords have appointed this Conference, upon the subject-matter of the last Conference; and have commanded us to give these Answers to the Reasons, and other matters, then delivered by the House of Commons."

"*To the first Reason*,—The Lords conceive, that the most natural way of being informed, is by way of question; and seeing a paper here, which did reflect upon the privilege of the Lords House, their Lordships would not proceed upon it, till they were assured, it was owned by the House of Commons: but the Lords had no occasion at that time, nor do they [now] think fit to enter into the Debate of the House of Commons being, or not being, proper judges in the case concerning the privileges of a Member of that House; their Lordships necessary consideration, upon sight of that paper, being only how far the House of Commons ordering (if that paper were theirs) the apprehension of Dr Shirley, for prosecuting his Appeal before the Lords, did intrench upon their Lordships both privilege and undoubted right of judicature, in the consequence of it, exempting † all the Members of both Houses from the judicature of the highest Court in the Kingdom; which would cause a failure of that supreme Justice, not administrable in any other Court; and which their Lordships will never admit."

"*As to the second Reason*, The Lords answer, that they do not apprehend, how the matter of this Message is any reflection upon the Speaker of the House of Commons."

"*To the third Reason*, The Lords cannot imagine how it can be apprehended, in the least, to reflect upon the House of Commons, for the House of Peers, (upon a paper produced to their Lordships) in form of a Warrant of that House, (whereof doubt was made among the Lords, whether any such thing had been ordered by that House) to enquire of the Commons whether such Warrant was ordered there, or no; and without

* See p. 156

† In the Journal it is "excepting."

such

such liberty used by the Lords, it will be very hard for their Lordships to be so rightly informed, as to preserve a good correspondence between the two Houses, which their Lordships shall endeavour, or to know when Warrants from that House are true, or pretended; and it is so ungrounded an apprehension, that their Lordships intended any reflection, in asking that question, and not taking notice in their Message, of the complaint of the House of Commons owning that Warrant, that the Lords had sent their Message, concerning that paper, to the House of Commons, before the Lords had received the said Commons complaint. But their Lordships have great cause to except against the unjust and strained reflection of that House upon their Lordships, in asserting that the Question, in the Lords Message, could not be for information, as we affirm, but tending to interrupt the mutual correspondence between the two Houses; which we deny, and had not the least thought of. The Lords have farther commanded us to say, that they doubt not, when the House of Commons have received what we have delivered at this Conference, they will be sensible of their error in calling our Message, "strange," "unusual," or "unparliamentary;" though we cannot but take notice, that their Answer to our Message, "That they would consider of it," was the first of that kind that we can find to have come from that House."

[Debate.]

Mr Powle.] 'Tis the proper Question, "Whether these Answers of the Lords to your Reasons are satisfactory, or no," in order to a free Conference. 1. The Lords tell you, "the most natural way is by Question." What is expostulated ought to be by Conference, but not by way of Message. That may be an Answer to the Lords first Reason—That, for Answer, they tell us something, by way of protestation, of judging our privileges—The second Reason was a Question, Whether you had done according to the Order of the House, or no? The third was a reflection upon the House, as if we had done what we could not do, in extending our jurisdiction, by incroachment on the Lords, in sending that Warrant.

Mr Vaughan.] When we consider the Answer, let us consider the Message, "Whether we own the Warrant?" The Lords say, a Question is the most natural way. 'Tis so between party and party indeed, but not from a Court.

Mr Cheney.] The Messengers tell you, "The Lords

Spiritual and Temporal, in Parliament assembled, ask you this Question," as from a Court which cannot be informed but by a Question—There must be some other way of proceeding in this matter, which must be by Bill.

Sir Robert Carr.] We ought not to take things as they are represented without doors. Moves that we may vote, "That the Lords Reasons are not satisfactory;" and then to draw up Reasons for it.

Sir Thomas Meres.] Here are two points; first, a Message, by way of Question, for which we have had a Conference; they giving you Answer, let you in for another Conference. They give you no Answer to *Sibbiley* and *Fagg's* case; they have let you into the Conference to answer that—They have had their advantage in this, so you may take your advantage in the next Conference, to tell your sentiments of it, as they have done theirs.

Serjeant Selys.] When the Lords [are] trusted with the King's conscience, as a Court of Equity, he knows not the end of it. (Appeals from the Cinque Ports)—"Failure of justice" is a good word—Desires that the 4 H. IV. may be read. If they make themselves masters of all causes, by pretence of "failure of justice," all causes may come into their hands. 4 Hen. IV. "Persons were summoned before the King and the Lords. If error, then to proceed as in the times of the King's progenitors." See in these times what they did, as now in matter of Equity. Now they bring it under judicature of conscience, which the King has not trusted them with.

Mr Sacheverell.] There is another Statute, 1 Hen. IV. Chap. 14. "All Appeals, in the realm, to be tried by the Laws of the King, and his progenitors; and out of the kingdom, by the Lord Marshal."

Mr Powle.] These Appeals mentioned by *Sacheverell*, in that Statute, were not out of Chancery, but for criminal matters only. 21 Rich. II. Appeals against the Appeals of the Duke of *Ireland*, the consequence whereof was the deposing of *Richard II*. They were in case of High Treason, and criminal matters.

Sir

Sir Thomas Lee.] What he speaks to is, the Lords Answer to your Reasons—The progress will tell you—The Lords have stated the thing, and made positive assertions upon it—To the other part, the Lords have returned a dubious Answer; we may call it fallacious. They have sent but half their vote, and made an entry in their own books of right. After the Lords received your Answer, no Question arises upon the place where Shirley was arrested. You send a Message “about Lord Moun’t taking the Warrant.” The Lords answer, “He had done nothing but his duty.” Then, the next day, you received a Message, to know “Whether the Warrant was of your making.” They tell you, at the Conference, a kind of salvo. In giving you Answer to Reasons of their interrogating you, they will avoid that Question, which is the only Question before you. They, in this thing, have averred the whole matter—if you grant them free Conference, you must argue the whole matter—The Lords asserting their right, you must argue against their jurisdiction.

Sir Charles Harbord.] Would give the Lords such an Answer as may countermine their mine, and then is for a free Conference—First enter that in your books.

The Speaker.] You are first to resolve, “whether you are satisfied with the Lords Reasons.” That’s your proper Question.

Mr Waller.] Believes the Lords in the wrong, and you in the right, in all particulars—They say themselves, “they are the highest Judicature.” We cannot keep up our own right of Judicature without maintaining theirs. Once the Judges voted “Ship-money to be legal,” and the King was in possession of it. The Judges gave an ill judgment, and all Westminster-Hall was against you; but, by a law, we threw down all that; by this judicature wherein we have share. The judgment given in the King’s Bench against Holles, Selden, &c. that Court over-ruled, and here all our right was lost. We went to the Lords, and they threw down this judgment, by being the highest Court; he would not, therefore, throw down this Court, that has been so useful to us.

Mr Sawyer.] It may be, the Lords, in answer to your Reasons, have dropped something they cannot defend. You have appointed a day for Debate; and therefore, by an opinion, would not anticipate that day. Possibly, they see their Conference not defensible.

Sir Thomas Lee.] Reasons for a free Conference are never given. The Lords have almost forgot our Message, in their Answer. Would have the Managers of the free Conference have some time to think for your better service.

The Speaker] The free Conference is desired to maintain the Reasons you have given already, and you are to direct Managers to consider of them.

Sir Thomas Meres.] Fears the Message of "subject-matter unparliamentary," is too large and nice a word. The Lords resolve, that you shall not deliver them, and you take this course to do it.

Mr Swynfin.] This has let you into the maintaining your privileges. 'Tis proper to defer the Debate of this, to the next meeting, after three or four days recess, the first day after ten of the clock, and to report them then.

[The Question being put, Whether the House be satisfied with the Reasons delivered by the Lords, at the last Conference, it passed in the negative.

Resolved, That a free Conference be desired upon the matter delivered at the last.]

It being moved, "that Sir *Thomas Littleton* should report the Address about recall of the *French forces*," the House was divided thereupon, and being even [94 to 94] the Speaker gave his casting voice for the Report, which some thought mysterious*. He reported [accordingly] "We your Majesty's humble, and loyal subjects, the Commons, assembled in Parliament, do, with all duty and thankfulness, acknowledge your Majesty's gracious promise, in answer to part of our former Address, "to use all effectual means, both to forbid and hinder the going over of any of your Majesty's subjects to the service of the *French King*;" and we humbly crave leave farther to represent to your Majesty, that, since the peace made with the *United Netherlands*, notwithstanding the declaration of your royal pleasure, and all en-

* This affair, according to the Journal, happened the day before.
deavours

deavours used to the contrary, great and considerable numbers of your subjects (as well heretofore, as since our late application) have, and daily do transport themselves, out of several parts of your Majesty's kingdom, and dominions, for the service of that King, as recruits to the troops and regiments remaining there, at the conclusion of the said peace, receiving encouragement so to do (as we have reason to apprehend) by the continuance of a standing body of your Majesty's subjects in that service; whereby your Majesty's honour and authority have been disregarded, great reputation given, and success obtained by that assistance, in the behalf of the said King; and, if longer permitted, may tend to the discountenance and discouragement of those many Protestants, and other Confederates, now engaged in their common defence, against him, and to the hazard of *Flanders*; which we conceive to be contrary to the [true and] undoubted interest of your Majesty, and these [your] kingdoms, and like to prove of fatal consequence. And, therefore, we do presume again to address ourselves to your Majesty, and humbly pray, that your Majesty would be pleased to recall your subjects that are in the service of the *French King*."

The House then adjourned for the *Whitsun* holy-days, to

Wednesday, May 26.

The House was called over, and the defaulters [were allowed, or disallowed] according to custom.

Sir *Thomas Clarges*.] In Chancery, when people do neglect their trusts, other Trustees are chosen. This, of serving here, is so great a trust, that he would have letters sent to the several Counties and Boroughs to give them notice how they are represented. And would have the defaulters called again on *Tuesday* next.

The House was ordered to be called over again on *Wednesday* fortnight. And, in the interim, *Ordered*, That no Member depart from his attendance in the House, without leave.

Thursday, May 27:

Debate on the intended Conference.

Col. *Birch*.] Would not make the subject-matter of the Conference "on the Lords Judicature," but have it confined "to Privilege, in the case of Sir *John Fagg*" only. Sir

Sir Thomas Lee.] Moves, that Sir *Robert Carr* may carry the Message for Conference—Messages of extraordinary nature are usually done by persons of remark. *Sir Thomas Clifford* did it here, when Treasurer of the Household; and the Judges are sent by the Lords frequently on such occasions. On ordinary Messages, the Masters in Chancery, or the Attorney General, we see come only.

[*Ordered,* That a Message be sent to the Lords, to remind the Lords of a Message sent to them by this House, concerning the Privileges of this House, contained in an Answer to a Message of theirs, in the case of Mr *Onslow*; the Lords having returned Answer, “That they will send Answer by Messengers of their own;” and that a Conference be again desired with the Lords, upon the privileges of this House, in the case of Mr *Onslow*.]

The Bill to prevent the growth of Popery, was read the second time.

Mr Waller.] A Papist is looked upon as a person that has a Sovereign somewhere else than in *England*—Every meeting, we have new laws against Protestant Dissenters, and, till now of late, none against Papists. He was always of the Church of *England*, bred and born in it, and hopes he shall die in it. There is a peace lost in disorder—Violent courses gave occasion to the late troubles—The occasion was both given and taken. Our severity formerly caused *Amsterdam* to make new streets for fugitive Dissenters; and, therefore, would have this Bill against Papists extend only to them.

But there was a clause in the Bill which provides against this.

Mr Secretary Coventry.] The intention of this Bill is against Popery; but, by that clause, you not only privilege Dissenters, but all profane persons, and debauched, that come not to church at all. He believes, no country can show, that a Conventicle is joining to his house, (a Secretary of State)—Would not have any thing in the Bill to give them encouragement.

Mr Sacheverell.] Informed the House occasionally, That the Grand Jury of his county (*Derbyshire*) presented Dissenters, upon the Statutes against Popish Recusants.

[The Bill, with the Proviso, was ordered to be committed.]

On

On the Clause of the Charter of *Newark*, making the capital Burgesseſſes, Electors only *.

Sir William Coventry.] The words of the Charter are, *in re, facto, et nomine*, as other Boroughs, &c. 'Tis at the peril of the discretion of the Counsel, if they will have all the Patent read, and of your patience, if you will hear it.

Mr Powle.] The King can grant a franchise, but not a service, whereby a Borough is bound to send Parliamentmen, as some Boroughs are by Charter; and that is a perfect Service. 18 Hen. VI. *Plymouth* is a granted Borough—*Chester, Wales, Counties, and Boroughs*. If the King could not, by Letters Patents, for Knights, without Act of Parliament, 'tis somewhat stranger he could not do it for Boroughs—Ever since Henry VII's time, Boroughs were created—*Maidstone* commanded their Burgesseſſes not to sit, till their Charter was examined. We may have Burgesseſſes, by such Grants as this, shoaled upon us; and though we are now under a gracious Prince, yet we are to provide for the future. All franchises may be lost by non-use. In King James's time, the House then judged it a service which could not be lost. If the King grants a Charter, it must be to the whole commonalty, and not a restrained franchise. It must be to the whole body. A Fair, or a Market, granted to the Mayor and Aldermen, excluding the Burgesseſſes, is void, the lawyers will tell you. If there be exclusive words to such a Grant as this of *Newark*, it will destroy the whole. As to prescription, no man can tell you how prescription comes; 'tis time out of mind. It may be by Act of Parliament, many Acts being lost.

Mr Sawyer.] Prescription may suppose an Act of Parliament. A custom in a Borough, excluding such trades, is not good by Grant, but good by Prescription. Ricb. I. Prescription goes so high; and it may be, an Act of Parliament was before that time.

[The Debate was adjourned.]

* There is no mention of this Debate in the Journal. It was probably in the Committee of Grievances, as well as what follows.

At

At the Committee of Grievances.

Serjeant Shafteo, *Counsel for the Freemen of Newark.*] A highway set out by Patent, though a nearer, and a better way, is void. A Market, or a Fair, granted without a Writ *ad quod damnum* brought, is a nuisance by law. The King grants a *capias* upon the first process, is naught in law, and voids the patent.

Mr Walpole, *on the same side.*] We ought to be heard to this Charter, as a Grievance, being granted before a Writ *ad quod damnum* was issued out.

Mr Offley, *Counsel for the Mayor and Aldermen of Newark.*] He comes not here to demur to your jurisdiction; but the Parliament sits not here for ordinary remedy, but extraordinary. If the case be as is alleged, there is remedy in *Westminster-Hall*. The Crown is concerned in this Charter; though it is not his place, nor duty, to speak to that. The Petition is the matter of fact, and law, against the Charter. From fact the Counsel, on the other side, depart. He will prove the Patent, not only by the knowledge of the Freemen, but with their allowance. You are told of a Writ *ad quod damnum*. The power of incorporation is in the Crown; but for a way, because it turns a subject out of his property, to put him into another man's property, is not this case. This is to tell the King, he cannot incorporate a town *ad quod damnum*. 'Tis strange the Freemen should have no benefit, by being represented in Parliament. A Fair, in *Somersetshire*, granted without a Writ *ad quod damnum*. How this Grant can be without any colour of benefit to the Freemen, leaves it to your judgment. To tell you, because the King gives them leave to send Burgessest to represent them, to be a grievance, is a strange thing! Tenants, that held in demesne royal, made it grievance that they had none to represent them in Parliament.

Mr Walpole.] If for a Fair, or Market, being small things, a Writ *ad quod damnum* issues forth, much more to so great a matter as a Charter of this nature. The King cannot grant Letters Patents, or Offices, for surveying and measuring of bread and beer, to the prejudice of a Court-leet. A fee, granted in charge of another's office, is void, but where there is *quid pro quo*. Though, in small matters, waved. This town was as well represented by Knights before, as it can be by Burgessest now.

Serjeant Shafteo.] Mr Offley would gently and softly plead to your jurisdiction, and bring the matter *ad aliud examen*. The grievance is the great matter; and so he has not departed from the Freemens Petition. The three towns, in the Charter, are excluded from Burgessest voices, and, is told, are excluded from the

the benefit of the tolls. The Question is not, whether a Writ *ad quod damnum* ought to be ; but we might have had a *scire facias* ; and the law-books are full of it.

Sir William Scroggs, Serjeant, for the Aldermen, &c.] This is a question in law. In all cases of law, will arise conveniency, or inconveniency. He hopes you will not abridge or prevent *Westminster-Hall*, in things remediable there. The King may erect a Court of Law, no lawyer can contradict it. He can grant *returna brevium*. He can appoint what officers he pleases, to make return of Writs by Grant, and, by consequence, may make Jury-men. But how comes—*Westminster*—It may be said by Prescription ; but that supposes a Grant. This place is an original Grant from the King. The King has a prerogative to impose Taxes, when *pro bono publico*, and a *quid pro quo*, when the people have conveniency for recompence—Murage and pontage. That's the reason why the King has power to erect Courts of Law, but not Courts of Equity, because the law of the land may be thereby obstructed. What do they do by this Charter ? Those of the neighbouring towns, by it, come to *Newark*, at the Court, or Law-day, are of a Jury, have a good dinner, and go home again the same day ; and, in recompence for that, neither attend at the county assize or sessions. The obligation of the towns incorporate by this Charter to pay wages to the Parliamentmen, is but an imaginary grievance, being rarely taken, though due in point of law, of which he has many witnesses of them that hear him. As to the King's power, he can take away part of a county, and erect an incorporation ; the King may appropriate part of a county to make it a peculiar, that people may have justice at home for their more trivial occasions. If the King does all this, the matter of the Patent is justifiable.

Mr Offley.] In the case of the Court of *Marshalsea*, created in the late King's time by Patent, hundreds of errors have been brought from thence to the King's Bench, and it has been allowed for a Court. No *scire facias*, nor Writ *ad quod damnum*, was ever brought. *Launceston* in *Cornwall*, the assizes for that county are held there by Patent, and never any inquisition was brought. If void in law, a *scire facias* goes against it, and voids that part of the Patent which is illegal. “Whereas, *Newark*, &c. before this Patent, went twenty miles to Sessions, it now goes but half a mile.” This argument might destroy all the Boroughs of *England*.

Serjeant Scroggs.] To set this Patent aside for want of the Writ *ad quod damnum* may be a proper argument in *Westminster-Hall* ; but submits to the judgment of the Committee, whether proper here.

Mr Walpole.] Concurrenti qui in jure requirunter. The gentlemen that own these towns incorporated, were never consulted in this Patent—Though 'tis said, we have a benefit by it, we say we have a displeasure.

Serjeant Pemberton.] A Patent may be good in law, though a prejudice to us. The King may erect a Court of Law, and a Borough to elect Burgesses—The complaint—“ Not to have done what by law might have been done.”—Mightily improper—We judge this done by surprize, and great hurt to us, and no advantage. The Mayor has got a Patent of power over us, and no imaginable benefit to the freemen. *Scroggs* says, “ that the jurisdiction, granted by this Patent, is near home, and therefore for the benefit of the towns incorporated.” We answer, that these petty jurisdictions are occasions of contention. Would any gentleman have a corporation have a jurisdiction over his manor, or farm, under specious shows of conveniency?—Who should bring this *scire facias* against the King's Patent?—Pray remedy for grievance.

Serjeant Shaftoe.] Makes no Question of the King's power of granting a Patent—But the Question is, whether the King may do it, without a writ *ad quod damnum*. Two of these towns, in the Patent, are Copyholders, and have courts of their own for tryals; they show you no advantage, but the dispute is not, whether the King may do it.

Mr Walpole.] The country gentlemen avoid these corporation jurisdictions as they would the plague.

Serjeant Scroggs.] How can you void a Patent that *prima facie* has a specious intention of good? If grieved, or how far aggrieved, or what particular benefit—Would think it better, in his own case, to be exempted from assize and sessions, to have justice near home. Children are grown men since this Patent was endeavoured. If no better reasons were shown the King to void the Patent than have here been shown, believes he will not be persuaded to void the Patent.

Mr Offley.] A *scire facias* may lie at the suit of the subject. Why do they therefore make a noise with “ surprize, and no benefit by it?”

Serjeant Scroggs.] Newark is the King's manor, and leaves the thing with you to judge of.

Evidence.] The scavenger's man came and took toll, and said “ the Mayor commanded him to take it of those within the Corporation.”

The Mayor said,] He delivered it back again, and would not take it.

Serjeant

Serjeant Scroggs.] Some benefits of this Patent extend to all, but all to some.

Serjeant Pemberton]—Complains, not as a grievance to the Lords of the Manors, but as to the Copyholders, who, though the King is Lord of the Manor, yet their tenure is touched by this grant.

[*Debate.*]

Earl of Ogle.] The King would give *Newark* a mark of favour; three other towns desired to be left out of the Patent, and they were left out. Surprise here is none at all, for when the freemen of *Newark* were debarred of voices, in the election of the two Burgeesses, then they complained, and not before. He does not know that the other towns consented to this Patent, but he never heard them complain of it.

Mr Sacheverell.] It seems, Lord *Ogle* agrees that these towns consented not to the Patent. Apparent that they are under a new jurisdiction, and a new charge. In their own copyhold court, causes may be tried, and this jurisdiction taken away. Tolls they take of them, and their attendance on the corporation is chargeable, and therefore a grievance.

Sir John Birkenhead.] This is *a posteriori* complained, and is not a popular way for us to meddle with the King's prerogative.

Sir Thomas Meres.] Many grievances, though not brought before you, and not complained of, because of the excessive charge of attendance here, are no less grievances for that.

Sir Thomas Lee.] The erecting new Courts of Law, if much practised, would be of strange consequence. We have a world of petty courts, and all gentlemen within their jurisdiction, subjected to them; the greatest inconvenience that can be.

Sir John Birkenhead.] This is the second Patent the King has granted, these fourteen years, of this nature, and is very tender in these things, though importuned to do it.

Mr Vaughan.] 'Tis said they have no Members to represent them:—Will you have every Borough in *England*

land have Representatives? For civil jurisdiction—Divide all jurisdictions into counties, and 'twill change the very government—The wild argument, “It may be done *pro bono publico*,” may be easily answered. *Westminster-hall* and we may dash the cognizance of the Patent—Most proper certainly for *Westminster-hall*.

Sir Thomas Littleton.] The novelty of it is a great discomposure to these places. *Westminster-hall* dislikes hundreds jurisdictions, and all Parliaments have done so.—’Tis, without controversy, a grievance.

Mr Vaughan.] This Patent, ’tis said, is granted for a favour, when these three towns bring it hither for a grievance.

Mr Powle.] There are grievances illegal, and grievances only inconvenient in the execution, and by ill procurement. He is not pleased with the manner of procurement of this Patent, nor the execution of it. Whether the King could grant a *returna brevium*, is a Question in *Westminster-hall*. He that is free, to submit himself to his next neighbour, may be abused. Here is a Question of the legality of it. It must erect so many new Sheriffs. Many a man will submit to a great inconvenience, rather than bring a *scire facias*. These towns were never heard, nor ever summoned; nay, many of the Corporation not consulted in the obtaining the Patent. By the words of the Patent, he takes the election (however) to be in the popularity. “New Courts, new Corporations, new Offices,” Lord Coke said, “were always to the Prejudice of the People.” All Patents are proper to be judged in *Westminster-hall*, and this may be judged here also a grievance.

Earl of Ogle.] Has seen several of Lord Digby’s letters to the Corporation, (when Secretary) “that if they proposed any thing to the King, for their advantage, he would grant it.” The letters are in being.

Sir Thomas Meres.] It was the King’s intention to gratify them for their loyalty—Many of the Corporation have no share of this loyalty, and the people that generally suffered and were loyal, have no benefit by the

the Patent. The Committee of Grievances have not sat these three years till now. We have meddled with as few grievances, and have had as few redressed, as ever Parliament has had that sat fourteen years.

The Debate of the Validity of the Patent was adjourned.

Friday, May 28.

Sir *Thomas Lee* reports, from the Lords Conference, “ That the Lords did not agree to a Conference on the Message of the 21st instant, because it was desired upon the Answer sent by the Lords, in the case of Mr *Onslow*, on the 17th instant, where the whole matter concerns the Judicature of the Lords, on which they can admit no Debate, nor grant any Conference : But this present Message being for a Conference concerning the Privileges of their House, the Lords have agreed to a Conference [as on this day,] at ten of the clock [in the forenoon] in the Painted Chamber ; always provided, that nothing be offered at the Conference, that may any way concern their Lordships Judicature.”

[Debate.]

Mr *Waller*] Supposes that 'tis before us now to think of an Answer to this Message from the Lords—We must therefore state the thing—There is something in it new, and something not new—They said it once, in Lord *Mordaunt's* case, of his sitting in the House, at our Message, when accused. The Lord Treasurer *Middlesex*, and an Earl, were accused, in a former Parliament, in his time, and they sat upon little stools out of the Bar—'Tis a disadvantage to us to manage an evidence, and the parties accused to sit as judges. They tell us, “ There is no Answer to be given to what concerns their Judicature.”—He knows not the event of that, but thinks, a recess, and the thing ended. This Answer is not particular. Say they, “ We allow Conference on your Privileges, but expect you say nothing on our Judicature”—To tell us we shall say nothing on this, and that the Conference is upon another purpose, a thing perfectly new !

Mr Secretary *Coveniry*.] Would have a Conference on this Answer. The Lords make a Jurisdiction over you, as well as a Judicature, by this Answer. This, in

effect, is to say, your Member shall not carry your Message—Would ask another favour of the Lords—They tell us what we should not say; would desire to know what we should say. He supposes this cause of your Member's, in the Lords House, to be neither treason, felony, nor breach of the peace. Your Member is called away to attend,—a man whom the Lords cannot send for; they will judge his case, and condemn him unheard—Would have a Conference on this Answer.

Sir *Thomas Lee.*] Concurs with *Coventry*, that you cannot go to Conference with the Lords upon these terms. “From Appeals the Lords will not depart, though a Member of this House be concerned,” they tell you. Upon this, you sent Sir *Trevor Williams* to ask a Conference, the 21st instant, which they could not grant, being to part of their judicature. Now, yesterday, you sent to the Lords, wherein you recited the former Message, and again send about the Privilege of Mr *Onslow*.—They make yours a different Message from what you send them, and they grant you a Conference, “provided you meddle not with their Judicature.” Would, at the Conference, also have some ground of subject-matter, that neither party may be surprized—You have nothing to say but in the case of Mr *Onslow*—The Lords have denied your first Message, and do, in effect, deny it now. Would show the Lords, that this is not their right, their judicial capacity being subservient to their legislative; and it will else be a stop to all intercourse of Parliament—Though the Lords have not so much land left as formerly their ancestors and predecessors had, yet they have enough to preserve the government, and, he hopes, in this matter of judicature, they will change their minds.

Mr *Vaughan*] Your Privileges, and their Judicature, are so involved, that the one cannot be conferred upon without the other. We have had great calamities, war, fire, and plague; but nothing has so fatal an aspect as this difference. Where God lays his hand, by prayer it may be removed; but when we lay our hands upon ourselves, he fears the judgment—The deed inrolled against us. When the Lords deny you this, it looks as if they would

would take all power to themselves. In inferior Courts, such proceedings are not dangerous, being controllable by the superior; but when supremacy and impunity go together, there is no remedy—Suppose an Act of Parliament is appealed against—You have a common plea before the Lords—An action of debt, and you interpose, and they say, they will go on; in what condition then are we? He has respect for the Lords, who, though they are not bound as other Courts are, yet they are bound. They can no more proceed in this, than in making an Act of Parliament alone, without us. Though they have a Jurisdiction, yet hopes, they have it not at large. 'Tis destructive to the Crown—He speaks not to make the rent wider; but, if this goes on, the Lords may put the Crown on whose head they please—if Conference be denied us, we cannot arraign them for it, but hopes the nation will.

Mr Sawyer.] You must show, that there is “no failure of justice,” as the Lords allege, and that remedy may be had elsewhere—We meddle not with the points they have jurisdiction in, as in Writs of Error, time out of mind, but *judices sub lege*. If they take upon them matters out of their cognizance, they are controllable by the legislative authority. They are, like other judges, *sub lege*, and he would have a Conference on the Lords Answer to your last Message.

Mr Waller.] How unequally do the Lords deal with us?—We hold as fast for money-matters to begin here, as they to Judicature. In the Little Parliament, before the Long Parliament (which was not very quick in giving money) the Lords were quicker than we; and, at a Conference, they urged us to give money. We then did not run away from the Conference—*Pars non major toto*. He hopes that the Lords are not greater than the King, Lords, and Commons—We then did not by them, in point of Money, as they do with us now in point of Judicature. Now he sees not the terrible fear of the consequence of this difference, but would, by Conference, show the unreasonableness of the Lords pretensions.

Sir Robert Carr.] Lately, in the Bill of Impositions, the Lords lowered the sum we sent up; you denied them not Conference thereupon, though you had reason on your side; he hopes that may have some effect now.

Sir Charles Wheeler.] Would enter something on your books, before you desire a Conference—Reason, in nature of equity, when *lex et consuetudo*, is a rule. If the Lords are bound up, and the King the only Judge in equitable causes, he judges it much to do to keep them in bounds—Though, possibly, the Lords may have equitable Judicature, yet they have it not over Members of this House. Suppose, in a Land-tax, and we unequally charge the Lords, we shall never deny them Conference upon it—Therefore moves to enter our Reasons, of the inequality of the Lords Answer, before we proceed to Conference.

Sir Thomas Littleton.] We are going to do the most irregular and inexcusable thing that can be. We have desired a Conference with the Lords, and the time is come for it, and we tell not the Lords why we do it not.

Mr Sacheverell.] Sure you will judge this Message of the Lords “a denial of a Conference,” though in as soft expressions as you please, “and unsatisfactory,” before you go to another Conference.

Sir Thomas Lee.] Before you can send this Message, you must have Reasons prepared; would not go unprovided. That being the case, unless there be some resolutions of the House, knows no ground there is to draw Reasons. The Lords have not taken your former Reasons as you sent them.

Mr Powle.] Would reserve the utmost judgment to yourselves. Would pass a vote, “That the Lords Message is unsatisfactory, and therefore desire a Conference.”

Mr Sawyer.] Would vote, “That this is not granting a Conference from the Lords, according to your Message.”

Sir Thomas Meres.] No Answer was ever known, but upon the grounds the Question was asked. We shall not meddle with their Judicature, but when it comes in the way

way of our Privileges. If the Lords should turn their backs, and go away, let them see us laugh at them for it—Let us go, and say discreetly what we have to say, and let it have its issue.

Sir Robert Howard.] In the Conference about *Skinner* and *Barnardiston*, the whole business was about the Lords Judicature. He hopes the Lords mean not Universal Judicature. Would go to a Conference with a saving to their undoubted Judicature.

Sir Thomas Meres.] Let the Lords call it Judicature, or what they please, let us go barely upon our Privileges, and upon it continually proceed.

Col. Birch.] You must go to the bottom of this matter, though with as soft and easy steps as you can. You have not said, you will debate the Lords Jurisdiction, at Conference, but Privilege; and the Lords answer, "You must not meddle with their Judicature." The Lords have all the staff in their hands, and he would get part of it into ours, in hopes of the rest. You are not now at a free Conference, but at a Conference; you read your Reasons, and should the Lords turn their backs, it would be strange. He takes your Reasons to be substantial. The softest and easiest steps are the most probable to attain your end; and, by this way, you may bring in what you will.

Mr Swynfin.] He takes the matter to be this: The Lords power, in matters of Appeal, against any Member of this House. You must understand the power from the first time they used it. When they reserve a power over your Members, no other construction can be made, nor can we collect any thing else out of it—The Lords deny you any Conference in the case of Mr Onslow, being about their judicial power, not to be meddled with.—Conference with limitation, he knows not how to reconcile these. They answer nothing to Mr Onslow; they limit it besides, that it shall not touch that case; they avoid an Answer as to Privileges—But, in the case of Mr Onslow, 'tis, in effect, a denial. In the way demanded, 'tis no Answer, being in the case of Mr Onslow—Would

show the absurdity of limiting this Conference. Will the Lords make their two Reporters judges of what you say as to their Judicature? Your Reporters have nothing to do but in what you tender the Lords. The Reporters else will make themselves have jurisdiction. He rather inclines to say to the effect already propounded; otherwise you admit a precedent, that, whenever the Lords send for a Conference with limitation, you must grant it.

Serjeant *Maynard.*] The Lords, in effect, tell you, they will at Conference talk about your Privileges, if so be you will not talk of their Jurisdiction; he sees not how you can retain this for an Answer, thus limited and circumscribed.

Mr *Swynfin.*] The Lords leave the Answer to the Message about Mr *Onslow* out, and single out a Question you ask not, and then limit the Conference.

Sir *Thomas Lee.*] The thing must be taken in its perfect coherence. The end of Conferences is, if they have not their effect on replication, a free Conference follows. The Lords will tell you, this Conference is not on their Jurisdiction—If we be once reduced to that condition, only to speak what the Lords shall limit us at a Conference, we are in an ill condition. If you accept Conference, on this condition, you yield the whole matter of the former Conferences.

Mr *Sawyer.*] If one grants, and another accepts, it must be taken according to the grant. By the constant rule of law, we must take money for the use it is accepted, in payment of such a debt as is intended by the granter.

Sir *Henry Ford.*] Would accept this for Answer—Hopes for better things than a tragical consequence, and that the Lords will be better advised, and come to Conference.

Mr *Powle.*] You may order your Members to make a declaration at the Conference, that they have liberty to debate their Judicature. A Conference was not desired in the Little Parliament, as *Waller* told you, but by

by way of declaration ; otherwise Conferences will multiply *ad infinitum*.

Sir Thomas Meres.] If you ask Conference, they must do it upon the terms you ask it, or deny it. Like the laws of *Ireland*, they cannot alter, or enter a Proviso, but must take, or refuse, the whole. 'Tis the same case with us ; if their Proviso be able to oblige us, it renders the Conference nothing.

Sir Thomas Lee.] The Lords have said, as on another occasion, when a free Conference was demanded, "they are not prepared to argue."

Sir Thomas Clarges.] Supposes that this vote be delivered at a Conference, and then the Reasons may be of great service to the House, to prove they have admitted Conferences, as to their Judicature—*He went not on, being taken down for speaking twice, without leave, as if at a Grand Committee.*

Col. Birch.] His mark that he sets up, in this matter, is a good correspondence between the two Houses. The Lords second Answer is a kind of salvo to the first—This is one step to a good agreement. This last Answer, with limitation—You may accept of Conference, with a Declaration, and so no precedent upon your books.—A Declaration "that Conferences are not to be granted with limitation."

Resolved, That, by the Lords Answer, there is no grant of a Conference upon the matter, as it was desired by this House, in their last Message, in the case of Mr Onslow.

Debate on the Lords Judicature of Appeals.

Sir Thomas Clarges.] Can the Lords derive this Judicature of Appeals higher than King James's time ? It takes away tryal of all Freeholds, and all things else—*Magna Charta, Charta de Foresta.* In tryal by juries, we are all tried by our Peers ; before the Lords, by this authority, we are not. The Lords say, they have precedents as high as Hen. VII. but whether any thing of a man's freehold was then decreed, is the Question ; else it squares not with this case. 1 Hen. IV. chap. 23. "In

pleas, as well real as personal, in the King's Courts"—Parties were then compelled to other Courts, and judgment was good, till reversed by Writs of Error, or Attaint—The Lords authority, in Writs of Error, no man disputes, but the Lords cannot take the merits of the cause before them, but as the matter is recorded. By these proceedings by Appeals, not only the subject is in danger, but the King is dishonoured by it.—There is no process in *Westminster-Hall*, but by the King's Writ.—The King's dignity preserved, but here the thing is done in paper. Precedents cannot be in force to repeal Acts of Parliament. This Act before-mentioned was made by intercourse of both Houses, and because the Lords had exercised this jurisdiction, 'tis taken away. 15 E. III. That Act is repealed, and all that Parliament did, being against the honour and dignity of the Crown. It seems to him very plain, that, in this paper-part of Chancery, of Appeal to the House of Peers, they have no jurisdiction.

Mr Sawyer.] *Ad superiorem judicem* is an Appeal—The Lords have not such a power. A Court of Equity cannot be by grant; it must be by prescription, or statute law. A Court of Record is *coram domino rege in parlamento*, and as the Lords are a supreme Court, for Writs of Error is not the Question. But as to their usage, in matters of Equity, 1 E. III. No. XI. *Elizab. de Burgo* petitioned against *Hugb Spencer*, to be relieved from an indenture obligatory, in duress granted. 'Twas judged that the bond should be delivered up. If, at that time, the Lords had any such Judicature, it might have been done without the Commons. This was a judgment of the three states.—5 E. IV. *More* and *Cobb*'s case. Judgment was given in the Absence of *More*, who was beyond the Sea. *More* exhibits a Bill of fraud against *Cobb*, for the judgment obtained against him in his absence: The Chancery then had narrow bounds; the Chancery advised *More* to exhibit a Bill in Parliament for relief, and he had it. The Lords exercised no Appeal then. 1 H. VII. No. 42. The case of *Weston*, Prior of St. John

John

John of Jerusalem—He exhibits a Bill for throwing down two of the houses, in the rebellion of *Jack Straw*; the petition was granted by the Lords and Commons; the King discharged him of his rent. In that plain matter of equity, the Lords did not meddle. The same, No. 63, another private relief, and many by private bill. 37 H. VI. An action of debt upon bond. *Resolved*, No Writ of Error could be there to reverse a judgment; no settled Court could do it, but in an extraordinary manner from the King. There was a reference in Queen Elizabeth's time to all the Judges. She referred the decree to the twelve Judges, and they reversed the decree. In 18 K. James, Sir George Marshall, and Sir William Pope's case. *Pope* would give *Marshall* 1000*l.* to procure him to be made Knight of the Bath. It being done at the instance of *Marshall*, who could not get his money. The great matter was, it was purely matter of law, being a contract. Mr Secretary was sent from the House of Commons to take care of it. The Bill and Answer were taken off the file, and the Master of the Rolls was ordered to do it. Upon search, this is the first precedent to be found of the Lords judging Appeals. Some have been brought since, before the Lords, as a grievance, but few, as a jurisdiction. The Lords cannot take these Appeals by prescription. This Court, as all other Courts, must be *sub lege*. 'Tis true that the Courts of *London*, *Chester*, and *Wales*, have not such gradations in equity as *Westminster-hall* has. If the Lords House be a Court of Equity, they must do it, and accept all causes. Every defendant and plaintiff will be here, and so all parliamentary matters cease. The Lords tell you, “If Prerogation happen, they will take the Cause where they left it.” If all Causes be brought to them, and all proceedings cease in other Courts, till they meet again, and impossible that, in twenty years time, Causes should be determined there in this manner, 'tis derogatory to the King's prerogative. Chancery itself has almost overthrown all other Courts, and if the Chancellor err, he is to be corrected by the King. H. VIII. appointed a Commission

mission of Delegates,—yet the King has given a special trust to the Chancellor—Shall the Lords be only trusted? This of Delegates is a matter of trust in the King. There are few ancient precedents, but of Appeals to the King in Parliament; and upon Appeals to the Lords, and not to the King, he is shut out of doors, and the Lords only Judges. If the Lords go one step higher, there will be nothing left the Commons to do, but to give money. This strikes at the whole legislative power. At this rate shortly the Lords may relieve against fines and recoveries, as fraudulent matters. He knows not one case, but, by this course, may come before them. The Chancellor dismisses an extravagant Bill, for want of jurisdiction, and, in the case of Sir John Fagg, the Chancery can go no farther, but the Lords will go upon an original Equity. The wisdom of all ages has been, not to put law and equity in one Court. (All former pleadings in *Latin* till later times.) If law and equity be both in one Court, would know, whether 'tis not a legislative power. This being the matter, they having no jurisdiction, he hopes you will declare it so.

Mr Powle.] Heretofore the interest of Writs of Error, in this House, was ancient. Writs of Error were brought to the Lords, that the King might proceed thereupon “by advice of the Lords Spiritual [and Temporal,] and Commons.” 31 E. III. A Writ of Error out of the Exchequer, never any out of the Star-Chamber. The predecessors of the Lords were of another mind, than now, it seems, they are in these cases. 1 H. IV. “Power of taking away of Appeals in criminal matters.” In R. II. “taken away at the request of the Commons.” A power they will not suffer us to confer upon now. The Lords tell you, “They are not only the highest Judicature, but they have the supreme justice, not administrable in any other Court whatsoever.” He knows not their meaning, unless they pretend to have power over our lives and fortunes, when they please. This will make a single Court unaccountable to the legislative power. A case upon

upon a pretended false verdict may, by this power, be brought to the Lords.

Serjeant *Maynard.*] At this time, 'tis inconvenient for you to press the Question of the Lords jurisdiction. People abroad will examine, whether it be convenient, or not, and whether better to be judged by the whole Peerage of the nation, than by one Chancellor. 'Twill be a hard thing for us to say, the Lords have no jurisdiction. You will find them armed with reasons and precedents for some long time; but to go from our privileges to their general power—Let us *first take out the mote from our own eye.* He speaks his heart—What is just and reasonable may be seasonably done hereafter.

Sir *Thomas Clarges.*] Remembers his notes taken after Serjeant *Maynard*, in *Skinner's case* *, " That the Lords had no jurisdiction in paper-petitions," as this of Appeals is.

Mr *Waller.*] You are about voting, whether the Lords have any power, to take Appeals out of Chancery. He is against determining this presently—In other Parliaments this has been considered—The Chancery was anciently only for matters of fraud. The Bishops, till the Reformation, sat in Chancery. In all the Courts of *Westminster*, there are three Judges, and one Chief Justice. It does not seem prudent, at this time, to meddle with their power in general; you have their honour, their estates, and the Judges present with them; sure they are better Judges than one man.

Mr *Vaughan.*] The Chancellor's judgment is not final; that is, a Bill may be exhibited in Parliament, as you have been told.

Mr Secretary *Coventry.*]—Knows little of the law, but knows so much of himself as not to put himself in balance with lawyers.

Sir *William Coventry.*] Sees no necessity, nor prudence, of enforcing any thing in the Lords jurisdiction now. Whatever you do, will be upon your own books. 'Tis not prudent to come to a resolution with a harsh Que-

* See Vol. I.

ftion,

ition, and they hearing it, it may be an obstruction to the Conference you desire. If any point of harshness must be, would rather have it come from the Lords than you. Serjeant *Maynard* doubted, and where a doubt is, would be loth to see the House of Commons put to a retreat in the matter. One said, “ ’Twas better to have the Power in the Chancellor.” If such an Appeal from the twelve Judges to the Chancellor—If the Lords will be the highest Court of Judicature, before the matter has been before the twelve Judges, they take it *per saltum*. ’Tis for the benefit of the subject to have as many checks in proceedings at Law as may be. If you come point-blank upon the Lords, about this Jurisdiction, you shut up all legislative course whatsoever, by the Bill for Redress. ’Tis said, you have remedy by a legislative course, which, if the Lords refuse, the whole course of Parliament stops. When you shall digest the matter, in the nature of a Bill, ’twill solve all, delivered at a Conference, and he would adjourn the Debate now.

Mr *Vaughan*.] 42 Queen *Eliz.* A Decree was made by the Chancellor, and the Queen was petitioned against it for redress. If you defer this Question, all your Reasons will be lost, now fresh in memory.

Sir *William Coventry*.] Would be loth to go to a precipitate resolution, and therefore would have learned gentlemen give you in writing what they have said, and adjourn the Debate.

Sir *Edward Dering*.] The thing is of great consequence, without doubt—Speaks only to the seasonableness to come off from that rock, we are running upon. He has heard, that since the 21 K. *James*, 51 years, the Lords have been in possession of this judicature, and with no ill effect to the people that he has heard of, and what hurt can two days more do, for consideration of a thing of this importance? He hears that the Appeal against Sir *John Fagg*, and Mr *Onslow*, is let fall, and not proceeded in. Would adjourn the Debate to *Monday*.

Sir

Sir *Thomas Lee.*] He fears it will appear upon your books, that the Lords have made an univerſal claim, and you have nothing upon your books yet, of your opinion. Just before *Skinner's* case, another complaint was before you of original proceedings, in a criminal case, of Mr *Fitton*, upon the complaint of Lord *Gerrard*, for a petition he prepared for you *. He was ſentenced in the Lords House, and imprisoned, and knows not whether yet he is out of prison, unless on the Act of Pardon. The great business of *Skinner* engaged you ſo much then, and took up your time, that that ſeemed to drop from you. Shall this go away unremarked also? Your ſingle case of Privilege will only appear by ſuch a Vote as you have made already. But, in the next place, would take that of Appeals, in general, out of Chancery into conſideration.

Sir *Thomas Littleton.*] If nothing be done concerning this great jurisdiction of the Lords, we ſhall leave the ſubjects in a worse condition than we found them. He knows not whether Appeal to the twelve Judges be a precarious thing, or of right. If no private person be a match for the Chancellor, and probably the Chancellor may have a great influence upon the House of Lords, there may be another way, by petition to the King for Delegates by his appointment.

Colonel *Bircb.*] The common proverb is, “Two words to a bargain;” the arguments he has heard for this ſeem to be againſt it. It is ſaid, “If you paſs this Question, you throw this authority upon the Chancellor”—We are much ſooner pulling down than ſetting up—He will always ſupport the opinion of this House, though againſt his own. The conſequence of the Lords denying us Conference will be maniſt to every one, by our Reaſons. ‘Tis doubted how we ſhall make this Vote good—Should that happen to be true, ‘twill be too brisk a Vote to paſs now—At a Conference you may give Reaſons, and have much more advantage, than by paſſing ſuch a Vote now.

* See Vol. I. p. 88.

Mr

Mr Secretary *Coventry*.] Would have the House in a Grand Committee, on *Wednesday*, for more liberty to speak. Money, Religion, and the highest of your Liberties, are usually in that method. This is a thing of the highest nature.

Sir *Lionel Jenkins*.] He is for an adjournment—Is not able, from all this Debate, to satisfy his judgment in this great affair. If the Lords have no Right to take Appeals from the Chancery, all things that have been judged before them, since 18th of K. *James*, are unravelled, and the people may petition the King, that the matter may again go before the twelve Judges.

Mr *Vaughan*.] Had the thing been *de novo*, something more might have been said; but this day was set apart for this Debate. If the parties have put in no Plea to the Jurisdiction of that Court, (the Cause depending) the judgment is good, and cannot be “unravelled,” as *Jenkins* says.

Serjeant *Jones*.] From the 18th of K. *James* to the 3d of K. *Charles*, there was but one Parliament, and none again to the 16th, and whatever precedents were at that time, he lays no great weight upon them. ’Tis certain, that the Lords have the *last resort*, but they have it not in every Case. By Act of Parliament, Appeals were to Delegates. Appeals to the Chancery are both new, and very improper. In Writs of Error, they may give Judgment, and they are improperly called “Appeals.” The Marshal’s Court, the Ecclesiastical Court, the Admiralty, and Chivalry, had Appeals. 24 H. VIII. Appeals from an Archbishop of *Canterbury* to the Convocation. But in the last of H. VIII, before the Judges, Delegates, and from them to new Delegates, by Commission from the King, *ad revidendum*. A thing of so high a nature as this would require some time for consideration, and because the Lords have made many Decrees, we should not hazard vacating them. If *coram non judice*, no time of doing them can make them good. Possibly the Lords have been too hasty in their Votes; let not us be so too. ’Tis said, “we have had time already to consider;”

consider ;” but this is the first Argument, and only to be judged in a Case of great clearness, and the Judges do rarely determine at first. We shall be better able for resolution, by some intermission, and therefore would adjourn the Debate to *Wednesday*.

Mr Powle.] The Argument “of the Judges” does not hold here. Here are many Judges, and the Argument may be easily lost.

Serjeant Maynard.] He has not mis-spent his time, about this Question, since it was first started. He has read much, and has much to say on both sides, but there is no reason that his dissatisfaction should stay the House’s opinion. ’Tis a mistake that the parties consent does make the jurisdiction of a Court good—But would farther consider the Question, “ That there lies no Appeal to the Lords in Parliament, from any Court of Equity.”

Sir Thomas Littleton.] As to that of Chancery, *res ipsa loquitur.*

[A Conference with the Lords was desired. Adjonrned till Monday.]

Monday, May 31.

Conference from the Lords [reported by Sir John Trevor.]

“ The Lords have appointed this Conference, out of that constant desire and resolution they have to continue a fair correspondence between the two Houses, which is [of] the essence of Parliamentary Proceedings. [For this End] their Lordships have commanded us to tell you, that they cannot but take notice of the House of Commons failing to be on *Friday* last at a Conference, desired by themselves, and appointed by the Lords, at ten of the clock in the Painted Chamber; that they conceive it tends to an interruption of [all] Parliamentary Proceedings, and to evade the Right of the Lords to appoint time and place for a Conference.”

Ordered, That no man prosecute an Appeal at the Lords Bar, wherein a Member of this House is concerned.

Sir Francis Drake.] Gives an account of Mr *Porter*, and Serjeant *Pemberton*, that appeared at the Lords Bar in an Appeal, wherein Mr *Dalmahoy* was concerned.

Sir Robert Carr.] The Lawyers ought to have notice of your Vote, and the best way is to summon them here to know it,

Sir

Sir *Edward Baynton.*] Reports may be false, as well as true; therefore would enquire farther. Formerly your Orders were printed and published for all mens notice.

Mr *Sacheverell.*] Mr *Dalmaboy* is Defendant. You may send for the Counsel, and know the matter.

Sir *William Coventry.*] He had occasion, on *Friday*, to speak with a Lord, and was willing to know how things went in the Lords House. Some others of the House of Commons had their curiosity about them, as he had his. The Lords were very cautious in what they told them—Possibly the Lords may enquire who were Executors, or Legatees—And your Members not parties in the Case. May it not be said, in a Court at *Westminster-Hall*, some one of your Members were present at such a thing? But what calls not for your Members attendance, is no breach of Privilege. See the thing charged personally on that man, before you give any man the trouble of a Summons hither. (*Sir Francis Drake excepting at what he said, as if he had informed the House wrong*)—He said—He did not say it, to put your Member, and an inferior Officer, in the balance.

The Speaker.] Your Orders are published, either in *Westminster Hall*, or the Inns of Court, but, as this Order stands, 'tis not so public as to be taken notice of.

Mr *Palmes.*] He had the curiosity, as other gentlemen had, to go to the Lords House. He found no Counsel there for Mr *Dalmaboy*, but a Lord asked, “If Mr *Dalmaboy* was concerned?” One of the Counsel said, “Yes.” “Then,” says a Lord, “let us go on.”

Mr *Dalmaboy.*] The Earl of *Darlington* made a will, and gave his daughter a legacy, who is his wife, with other legacies. A decree in Chancery was made in the Case —He had no Counsel at the Lords Bar. They were only for Lady *Bowyer* and Lady *Salisbury*.

Mr *Hampden.*] Supposes the Case is, “Counsel appearing at the Lords Bar, in a Cause wherein your Member is concerned.” Consider whether all the Counsel ought not, at their peril, to know that he is your Member.

ber. Every officer is bound to take notice of it. In *Westminster-Hall* they are so cautious, in any cause that concerns your Member, that, by consent, his hand is set to a Rule of Court. This is worth your taking notice of.

Sir *Thomas Lee.*] The common report is, "that the Lords refused to proceed, till the Counsel declared they were against *Dalmaboy*." 'Tis easy for you to enquire into it. Now, for any gentleman to tell you, "that the Lawyers do not break your Privileges, in appearing against an express Order of the House," is strange. If you will let the Lords go away with this, and quit this part, you must expect the next will be Mr *Onslow*, and then Sir *John Fagg*, and as many more, it may be. Moves, therefore, that the Counsel may be sent for to answer it.

Mr *Powle.*] If you consider what you have done, you may the better see what you are to do. Your first vote was not a new Privilege; you assert your ancient Privilege, and if the Lawyers do not understand it, let them break it, at their perils; and you are to proceed in this as in all other matters, where your Privilege is broken. The Counsel said, they had no instruction from Mr *Dalmaboy* in the cause; yet, on the other side, the Counsel declare they are against him. He shall not be of the severest, but if the Counsel are not sent for in Custody, it will seem want of courage.

Sir *Thomas Meres.*] He cannot well understand the matter of fact. Sometimes *Dalmaboy* is no party, and the Lords question, whether any Counsel be against *Dalmaboy*. He cannot distinguish it; if no-body had named him, then he is no party. Some of the Lords are angry, and the Counsel reprehended, "Are not you against *Dalmaboy?*" The consequence is, *Dalmaboy* is a party, and known by the Lords, and the Counsel too, that he had an interest in the matter. Where your Member has an interest, they will leave his cause out, and judge the rest involved with him, to his ruin. If the Counsel know it not now, pray learn them more wit for the future. The

town and the nation know it; every man rejoices that you stand up for the peoples right. If any man will prove *Dalmaboy* not concerned, he says something.

Sir Henry Ford.] Thinks you will not want courage to send for the Counsel in custody; but he hears it from *Dalmaboy*, "that he retained no Counsel." If he was no party, no man could appear against him. Persons say only, they have heard it; and for a Serjeant of great quality to kneel at your Bar—

Mr Wild.] If the thing be upon record, and on the Lords books, then *Dalmaboy* is concerned.

Mr Streete.] The Lords do not so much as name him; and if it appears that *Dalmaboy* be no party, the Counsel is not to blame—Would refer it to a Committee.

Mr Secretary Coventry.] No law enjoins a man to give evidence against himself. Therefore *Dalmaboy* cannot be urged to declare—(*who sat silent.*)

Sir Thomas Littleton.] The Question was, Whether formerly, before your Order, *Dalmaboy* did not retain Counsel? 'Tis a Question against the Counsel, but not against your Member.

Sir Edmund Jennings.] *Dalmaboy* has put in his Answer, he tells you, but not since your Order.

Sir Thomas Lee.] By *Dalmaboy's* silence, in not informing you, it may be gathered, that Counsel has been retained.

Ordered, That Sir John Churchill, Serjeant Pemberton, Serjeant Peck, and Mr Porter, be summoned to attend the House to morrow morning, at ten of the clock.

Ordered, That the Lords Journal be searched for what business has been depending, relating to Mr Onslow and Mr *Dalmaboy*.

Sir Thomas Lee.] Moved to have the Vote concerning the Lawyers posted up at the Inns of Court, and Chancery, as it has been usually done.

The Letter was read to the Boroughs and Counties, to give notice of their absent Members, and ordered to be sent.

Ordered, That the farther Debate of the Address about the removal of the Duke of Lauderdale be at ten of the clock.

Sir *Kingsmill Lucy.*] We have pressed the King so often for the removal of the Duke of *Lauderdale*, and, for Answer, we have only had a civil denial. If there be a reason to cease this prosecution, would hear it. If he has expiated his former ill actions, by any thing lately done, it would much prevail with him, by such a demeanour, to forget what is past. Has no reason to think his principles are changed, when he calls those that were against the Declaration, “*Deserters of the King.*” Since the first Address for his removal, he has had increase of honour *, and a pension, as if in defiance of us—He believes him dangerous, and obnoxious to the Government, and as such a one would have him removed.

The Address formerly made was read, with the King's Answer to it.

Sir *Joseph Tredenham.*] Should the Duke of *Lauderdale* be banished, on this Address, the late Act of Pardon would be violated, or at least suspended. Should it be violated, the King may justly say, he has gone by measures we have given him—Hopes we shall acquiesce in the King's Answer, as our progenitors have done before us.

Mr Secretary *Coventry.*] What he looks on now, is the King's Answer. As for what relates to the Act of the Parliament of *Scotland*, about the Militia, we cannot go farther on that, without giving offence to that Parliament ; as if we should say, they had not liberty of vote, nor how to make laws, without the influence of this Lord. As to the Pardon, as great a consequence the violating of it is, as any thing can be, relating to the Duke's removal. Is not discharging him the King's presence, and removing him from all offices, a punishment ? When the King has taken and weighed these Reasons that you have given, he wonders what will be your Answer to the King's Answer. Will you say, the Act of *Scotland* is no Act, or the Pardon no Pardon ? He knows not else what you can answer.

* Having been created Earl of *Guilford.*

Lord Cavendish.] Sees not how this can exclude us from a farther Address. In effect, 'tis a Question, how we shall ever have interest to remove an officer.

Sir Thomas Lee.] Thinks we are more obliged, by the King's Answer, to make another Address, than we were by the first. That the Commons should shake the Act of Pardon, we are most studiously to clear. The comparison must lie betwixt an oblivion, and pardon of crimes, for safety, named especially. Will any man tell you, that the King, having power to pardon, by Grace, has not power to remove a servant, or his very Privy Council? This is a matter of plain advice; you thinking so of this Duke, the King may do what he pleases. But that the Act of Grace should restrain the King from removing a servant—he wonders at it.

Sir Adam Browne.] The Act of Oblivion is for words, and, as the King has forgot them, he hopes you do so too.

Mr Secretary Williamson.] When that matter of Scotland comes before you, he sees not well what you can do in it. Gentlemen do not think that this will shut out the Pardon. He takes it, that a man is not only free from the crime, but from the very reproaches of it. Should any thing of this nature be enquired into, the Act of Oblivion, as well as the last Act of Pardon, may be shaken, it having once passed as well as the other. In no degree it suits with the justice of this House, and would go no farther in it.

Mr Vaughan.] *Nil dictum quod non fit dictum prius.* The same arguments on another occasion were made, and fully answered; no Act can be made "that we shall not remember crimes done," but "that there shall be no consequence, nor effects of it." "Affent and consent," in the Act of Uniformity, and the Act for purging Corporations, violates the Act of Indemnity as much as any thing—Should a bed-chamber-man conspire against the King's life, he would scarce keep him, when so informed; nor a deputy-lieutenant, that should rob on the highway, would he continue

continue in his place ; though, through his grace, he may pardon him.

Sir *Charles Wheeler.*] 'Tis said, " Cannot the King remove his servant ? " When you incapacitate *Lauderdale* from bearing offices, you take away his birthright to serve his Prince and country. It seems partial—Would have the House go on with such an equal way of justice as should seem impartial. The King has, in some cases, yielded to our Addresses, and in some not. In an Act of Parliament the King is obliged to no more than a reasonable Answer, and would proceed no farther in this Address.

Mr *Stockdale.*] We run upon mistakes ; and, he apprehends, the King does the same. The Duke of *Lauderdale's* charge is, " subverting the Government, and giving dangerous counsels." That he is an ill man, his words make out. If a charge were before the Lords, by Impeachment, this might be a good Answer. There, 'tis likely, the words and actions in *Scotland*, before the Indemnity, might acquit him. He now appears to be the adviser of the Declaration and the *French* league. These we show to be the reasons why he is an ill man.

Sir *John Ernly.*] If the Duke must answer against a public Act, and we have the benefit of a public Act, 'tis strange. Therefore he moves to rest satisfied with the King's Answer, and move no farther in it.

Mr *Powle.*] By what he can observe of the King's Answer, he finds neither denial, nor grant, of our Adrefs. Not one thing in the Answer to the Duke of *Lauderdale's* " procuring the *Scotch* Militia Act." Therefore that is admitted to be true, with that " of the *French* league." The article against *Mortimer.* 4 Ed. III. 21 Rich. II. Sir *Jonathan Bushey's* case. " Those under the same crown to raise armies in one kingdom to invade the other." A great encouragement for us to have him removed. There is a difference between not having employment under the King, a matter voluntary in the King, and punishing him. The King, in his Answer, seems to admit these words of Edicts, spoken in the Council, and in the King's prefence ; an Act of as great arrogance as

can be. 28 Hen. VI.—Was impeached for delivering up *Anjou*, and *Mayne*, and, by consequence, losing *France*. The Duke of *Buckingham* was impeached 17 and 18 K. *Ja.* though included in the general pardon. He was accused, though the matter came not to issue. There is a difference between prosecuting a man in the highest extremity of law, and not employing a servant, that has undone his master. 'Tis strange that all our Addressees cannot remove an obnoxious person. He knows not how the kingdom can be in security, if these *Scotch Acts* be continued as a scourge to hang over us. Once the *Scots* came in for the King, and another time a scourge to the kingdom. Would renew the Address.

Mr *Dalmaboy.*] Desires it may be considered, that the Duke of *Lauderdale* has been banished, and imprisoned, by the late usurped powers, from 1648 till the King's Restoration; and hopes he deserves not such severity.

Sir *Henry Ford.*] *Brutus*, having killed *Cæsar*, did ever after upbraid him with the title of *Tyrant*—Would not be suspected to condemn, or excuse, the Duke. Believes that the King might have answered categorically, as well as hypothetically, if he had pleased, to your Address. Had such an opinion, or doctrine, been delivered in the Council, as is alleged, he cannot think but the King's Counsel might have remembered it. 'Tis for your sake the King removes him not; and if not for yours, for the so many hundreds we represent. He violates not the Pardon. He remembers 1648. What great clemency has the King exercised in the Act of Indemnity? You know not what satisfaction the Duke has given the King. He has no personal obligation to the Duke, but believes him of great parts, and that he does not retain any such principles as are alleged. If he does, would banish him but two miles off, to *Bedlam*. Another Lord had many Articles against him, but not one of them proved *. He knows who undertook to prove all the Articles, but proved never a one of them. Our

* The Treasurer, Lord *Darby*.

Addresses take no effect, because what things are alleged are not made good.

Mr Powle.] *Ford* seemed to point at him in his discourse. One Article he undertook to prove against the Treasurer; and has farther proof of it, if you please to hear it.

Sir Francis Drake.] He hears that the Duke of *Lauderdale* was with the King in his chariot—Were he as high as *Haman* himself, he was not great enough to face this House. He thinks him not a fit companion for the King, and would have him removed.

Earl of *Ancram*.] Stands up to speak to the distinction he hears made between the Act of Oblivion, and Act of Grace. The Church of *Rome* says, “God pardons sins by Act of Grace; but for Oblivion of Sin, he purges it.” As for what the Duke of *Lauderdale* is accused, “of the *Scotcb* Militia Act,” none should go out of their country upon service. But in the latter Act, on occasion of Rebellion, the Militia may be drawn out, it may be to *Edinburgb*, as well as any other place. He is against that Act of *Scotland*; and, instead of removing this Lord, would address the King, that he would find a way to repeal that Act.

Col. *Bircb.*] *Ford* said, “If you thank not the King for his Answer, the people will.” Something there is, besides all this; an Address to the King, with hearty thanks for the Act of Grace; but would have some difference made between that and an Act of Oblivion. Mark your last Preamble in the Address for his removal, “as a man dangerous.” Your honour and the King’s go together. In the former Session you took notice of it in your Address, and you were dismissed, and he soon after not only got *English* honour, but money too. When he went into the country, the people he met at church marked it, and wondered where we were—He means fairly, would have hearty thanks returned the King for his gracious pardon, and would distinguish between an Act of Grace and Oblivion.

Sir Edward Dering.] He can agree with *Birch's* pre-mises, but not with his conclusion. There is no distinction between an Act of Grace and Oblivion, in *Westminster-Hall*, and he hopes you will make none here—He hears not a lawyer speak in it. If an officer, or a deputy-lieutenant, be pardoned, as is said, for an offence, by Act of Parliament, surely no farther notice is taken of it. As to that alleged “of the Act of Corporations, and the Assent and Consent in the Act of Uniformity, to be breaches made in the Act of Indemnity;” they are by Act of Parliament, which only can void another Act.

Sir John Bramstone.] The Duke's being with the King may be used as an argument both ways, with him.—That he is insolent for being there; and had he fled, he might have been inferred guilty.

Mr Sawyer.] The Long Robe have been called for often, in this Debate, to give their opinion in the difference between an Act of Oblivion and Grace. In that of Oblivion, reproaches should cease, and there is a penalty affixed. Pardon is in the nature of Oblivion; for if any man be called a felon, if he be pardoned, an action of late lies upon it. If a man have a particular Pardon, though such pardons be good physic, yet they are ill food. We have had instances of words the Duke has spoken; and once the King, in his Answer, reminds you of the time, before the pardon—Has this, he thinks, by way of admiration—“Have you nothing else to say?” In the case of *William De la Pole*, Duke of *Suffolk*, the Lords differed from the Commons about his accusation, and an Act was made, that no man should be accused for promoting it—But his delivery up of towns was a collateral case. Now the King has put us upon enquiry, that, unless we show we have reason for a new Address, we cannot do it. The main Act of the Scotch Militia was before his employment there; and so the King's Answer puts you upon the examination, to show how it was. To say, this Answer of the King's is not satisfactory, without new matter!—He sees no cause of an Address.

Sir

Sir Robert Howard.] Perhaps the House is inflamed by the Duke of Lauderdale's high carriage—The Duke of Buckingham has not carried himself at this rate, though your vote was not so sharp upon him as upon this Duke—Moves that, in vindication of the honour of the House, upon your re-address, your apprehensions of the nation may be expressed—“While such a person is about the King,” and submit it to him.

Mr Bennet.] 'Tis said abroad, that the way to have preferment, is to be under the displeasure of this House. 'Tis strange that one Scotchman should stand in the way of the House of Commons, that have given so many millions of money—Hopes that our Address will be panned with that modesty, that the King will grant it.

Serjeant Jones.] Perhaps this Duke was willing, in the Scotch Act, to take what might be had best for the King. As to the words he shd speak, they are very ill; but he takes them to be pardoned by the Act; and that Act must be broken, if you proceed farther in this Address. The differences spoken of, between an Act of Pardon and Oblivion, are rather nominal than real. He shall say nothing of his own head or authority, but out of Lord Hobart's Reports. In his pleas, one called the plaintiff “Thief;” the defendant did confess he stole a horse, but had his pardon for it. 'Twas judged, that the plaintiff stood right to all intents and purposes, because the defendant had broke the Act of Oblivion. It is said, we have addressed twice—Sees no reason why we should do it a third time. If the King should say, “I know nothing of cause for removal of the Duke, yet I do remove him, for those words, and for the Scotch Act,” he knows not how it can consist with your justice—God says, *bis mercy is over all his works.* If we have not a confidence in the King's mercy, he knows not whether we can have confidence in any thing.

[A farther Address was ordered to be presented, 136 to 116.]

Tuesday,

Tuesday, June 1.

The Lawyers before mentioned were brought to the Bar.

The Speaker told them, That they were summoned to give an account to the House of their appearing, as Counsel, at the Lords Bar, in the prosecution of a suit against a Member of the House of Commons, to the breach of his Privilege, thereby betraying the liberties of this House.

To this effect the Speaker delivered himself to each of the Counsel brought to the Bar, singly. The first was

Serjeant *Pemberton*] Who said, he was not conscious to himself that he had betrayed the liberties of this House, nor that he was accessory to the betraying [the rights of] any of the Commons of *England*; and gave a short narrative. That he was retained in an Appeal at the Lords Bar, and seeing Mr *Dalmahoy*'s name, a Member of this House, in the Appeal, he refused to be retained. The parties concerned brought an Order of the Lords for him to be a Counsel in that Appeal. He received no fee, nor was retained against Mr *Dalmahoy*. Then again came another Order from the Lords, to be in that cause, at his peril for refusing. So that being in this manner required to appear, he thought it his duty, though with an unwilling mind, to obey this Order. Mr *Dalmahoy* was not unwilling to have the cause heard, being for his advantage as much as any body's. The Counsel for the Appellees said, "Mr *Dalmahoy* was not concerned in the Appeal, and that the Appeal might go on without him." It was managed as Lady *Bowyer*'s and Lady *Cranbourn*'s cause. He was not apprehensive of any breach of Privilege upon your Member, and hopes you will not judge it so.

The Speaker asked him, If he had no knowledge of the Order of the House, that no Appeal should be brought against a Member at the Lords Bar?

Serjeant *Pemberton* said, He had no knowledge of any such Order; but one told him so in the Lords Lobby, but he did not apprehend it a breach of Privilege; and looks upon it that he is bound in duty to obey, when commanded by a superior Court; and, on refusal, such persons, in his condition, apprehend that penalties may fall upon them.

The next Counsel brought to the Bar was Sir *John Churchill*, to whom the Speaker delivered himself as before.

Sir

Sir John Churchill.] He can say little in the business. He was Counsel for Sir Nicholas Crispe, in the Chancery, and was desired to be in the Lords House also. As for contempt of your Order, he never contemned any; for he knows no Order that forbid him to be of Counsel in this cause to this time. His affairs are great, and he enquires not into affairsts out of his sphere. He was told that Mr Dalmahoy had put in an Answer to the Appeal in the House of Lords; and so, according to below-stairs proceedings, 'tis a consent *pro tanto*. It was without his knowledge, that Sir Nicholas Crispe made affidavit, that he was in a streight for Counsel. The Lords made an Order, that he should appear at their Bar as Counsel, and he was served with it the next day to attend that cause, at his peril. Every man loves his life and liberty. When he saw an Order, he attended. He saw little of Privilege of Parliament in the case. The Counsel declared for Lady Bowyer, and such interest—In law and equity they might most appositely appear.

The Speaker, as before.

Serjeant Peck, at the Bar.] He did not know of any Order of this House to forbid him being of Counsel in the cause. He has been many years a Counsel for the parties in Chancery. He knew not of the two Orders of the Lords House—but the third was, at his peril, if he appeared not. He was served with a copy of the Order, but the original was not showed him. Lady Granbourn is concerned as well as Mr Dalmahoy. He cannot but say, there was some discourse about this Order of the House of Commons; but it being not published, as usual, he thought himself not obliged to take notice of any such Order, till published. He supposes it a breach of Privilege to do it, if the Order had been published, as usual. He knows not whether a Member of this House may wave his Privilege, or not. He hopes he has not offended the revealed will of this House. The Sollicitor in this cause came to him, but without brief or fee, and was served with an Order to plead this cause at the Lords Bar.

Mr Porter, at the Bar.] He did not attend at the Lords Bar, nor ever was in this cause, till assigned by Order from the Lords. Sir Nicholas Crispe would have retained him before; but he said he could not attend, and refused his fee. Then Crispe brings the Order of the Lords, and he did attend, and thought it his duty to do so. He never knew of any Order of this House to the contrary, and knew not but your Member had waved his Privilege.

Sir Thomas Lee.] Thinks that these gentlemen ought to have the thanks of the House, if they have had suc*a care*

a care of the inherent rights of this House, as they tell you. They ought to know your Privilege; he is sure they can know it for their turns. Hopes that wearing a gown does not privilege a man to do any thing. *Pemberton* did not tell you, he did not know of your Order. In the case here now in controversy with the Lords, the Lords have no more to do but to deny you Conference—When in a Motion against one of your Members, Counsel shall be assigned by their Lordships order, 'tis but denying you Conference—Counsel ordered by the Lords, and the next immediate danger is to be avoided by you. The Counsel, it seems, know not your Privileges—Your Member appears in it, and yet they violate not your Privileges. Would have some slight punishment put upon the Counsel, as to be in custody, and then deliver them upon their petition.

Sir Thomas Clarges.] Is satisfied that all the Lords have done, in this matter is, *coram non judice*, and if the lawyers thus despise you, your work is at an end. If in the Lords House an Exchequer matter be, the Lord Chief Baron of the Exchequer gives sentence upon it, because he has had the hearing of it in his own Court, and the same is of the Chancery. He knows that no Court can be thus delegated. 15 E. III. “To determine all Causes,”—And three years after repealed and made void. Could that be done, but by Conference? This denying Conference is destructive to the Law of the land—Moves for confinement of the Counsel.

Sir Robert Carr.] Would make no steps in this matter, but as surely as he could. Whereas more is alleged by one of the Lawyers, in his justification, than the rest.—As for your Privilege, every man is bound to take notice of it. The Counsel have opened, how highly criminal Sir *Nicholas Crispe* is, in the business, and would take notice of it. Their excuses were very different.

Sir Richard Temple.] Sees not how, as to the Order of the House, the Counsel could take notice of it, but as to your persons they must take notice. All their question and excuse of it is of no value—They are all alike—

alike—The thing is, whether they have not relied upon the practice below and above, of Members waving their Privilege. He was constrained to have a suit in an unifluous term, because he knew not your pleasure about waving Privilege—The parties you ought to make an example of—Would hear the Long Robe about waving privilege; in the mean time would send for the Principals, the Lawyers being but the accessaries.

Mr *Hampden.*] The Counsel, when your Member waved his Privilege, had Order upon Order, before they appeared; and one Lawyer said, they had a consultation, whether they should appear or not. Would not have that pass for doctrine, that every vote about your Privilege should be called “an Order.”—They will call it abroad, a new Privilege. Would have some notice given of this Vote, as was moved.

Col. *Birch.*] Would not make any step in this business, but what should be absolutely necessary. Though Privilege cannot be quitted by your Member, without your leave for it, yet the standing upon it, always, may make it a great grievance. The Lawyers could not, and ought not, to take notice of your Vote, till you had promulgated it some way. He is far from arguing, that every Lawyer should suffer for pleading against any Member of yours. The case of Sir —— *Jones*, in the last Convention—the opinion was, he should give Answer to a Bill in Chancery. He desired to be excused—Privileges have not formerly been so sacred. Trouble not yourselves with the retrospect of what these gentlemen have done, but look forward to what you have to do with the Lords.

Mr Secretary *Coventry.*] Persons have been punished for serving *subpœnas*, but never knew a Lawyer punished for pleading. He hopes you will not use the Lords more unkindly than you do *Westminster-Hall*. He hopes you will not punish a man for not knowing what you keep secret. The Lords say, “their proceeding is right;” and you say, “it is not right.” Will you put these men upon deciding the matter? ’Tis hard they should be

be punished, for giving an opinion in law at the Lords Bar.

Sir *William Coventry.*] Would not have you declare, what your Members may do in waving Privilege. You may undo some of your Members, should you say he may not wave it. You will undo many merchants in their trading, who must do it upon credit, and many other gentlemens concerns also. Would have them sent for in custody, to give you an account, whether they knew the Order or not. It plainly appears they did not know these Orders, so as to make them criminal. If they had been served with your Order, it would have looked as a trepan to defend them from the Lords. They say, "that they had Reason to apprehend, that your Member waved his Privilege; because, before this Case happened, all men were under the opinion, that Privilege might be waved; and Mr *Dalmaby*, putting in his Answer, did, *ipso facto*, wave his Privilege by it :" Because he was your Member, they wholly left him out of their pleading. Would have their submission, entered in your books, suffice, and no farther proceedings against them.

Some ladies were in the gallery, peeping over the gentlemens shoulders. The Speaker, spying them, called out, "What Borough do those ladies serve for?" To which Sir *William Coventry* replied, "They serve for the Speaker's Chamber." Sir *Thomas Littleton* said, "The Speaker might mistake them for gentlemen with fine sleeves, dressed like ladies." Says the Speaker, "I am sure, I saw petticoats."

Sir *Thomas Lee.*] One point you may hang upon; the Counsel say, "They took it for granted, that your Member had waved his Privilege, because he answered the Appeal brought against him." They know, that, in other Courts, they will have an Order, and your Member is to subscribe that Order, as done by his consent, thereby waving his Privilege. It seems the Lords claim a Right of proceeding, whether your Member wave his Privilege, or not. This passes in no Court whatsoever, and hopes it will not pass here.

Sir

Sir *Thomas Stringer.*] These gentlemen of the Long Robe are charged with a breach of your Order. He supposes, that is over, your Order having never been published. As to your Member waving his Privilege; a Member that has waved his Privilege may take it up again. If it appears that Mr *Dalmaboy*, after waving his Privilege, did take it up again, then the Counsel are to blame.

Serjeant *Maynard.*] No man will question, but a Member may wave his Privilege, else you can make no bargain, nor borrow money; and if a man cannot wave his Privilege, you may soon wave all your credits. Though a Man will wave Privilege, yet it is the Privilege of this House. A man is sued, and if a man answers the suit, and a judgment is given, it binds the party, and cannot be waved. Now, whether, in this Case, putting in an Answer to the Appeal be waving of Privilege, he that does it, does, as far as he can, submit to the Court. What would you have these gentlemen of the Long Robe do? "At their perils," (by the Lords Order) if they plead it not. Can the nation take notice of your Votes? (There was a time in the Long Parliament when the Votes were thrown out of the window for notice, the doors being shut.) Your Privilege is a law, your Vote is none; and now you having done this much, believes no man will disobey you.

Mr *Garroway.*] Before you part with your Privilege, would know it. In *Westminster-Hall* the Courts are known. This authority of the Lords is an encroachment, and your Member is giving up his rights and liberties, by such a submission. Your essential Privileges cannot be determined by the Lords House. The Counsel have undertaken them, and would have them under your Serjeant's custody for a day.

Mr *Sawyer.*] This is not touching your Member, but the Counsel that pleaded.—It must be for a breach of your Order, or Privilege, on your Member. This Vote is no notice, unless the Counsel were served with it—Hopes you will take care to reap the fruit—

That

That the Counsel be served with your Order. 'Tis not now the Question, whether your Member may waive his Privilege, but whether he had waved it. If your Member should replevin, shall no Counsel be heard in it? Shall the defendant sue, and no Counsel against him? It depends not upon your Privilege, but your Order only. Would, to preserve your Privilege, enter the Counsel's excuse, and serve the Counsel of Sir *Nicholas Crispe* with the Order.

Mr *Powle.*] Will move for your honour, and then let it fall where you please. It appears that Mr *Dalmat boy* is a party, and no man doubts it, and these Counsel have broken into it — You may put them in Custody, and, upon their submission, release them. It will else be thought you have no assurance of your Cause. A man may, at any time, insist upon his Privilege. The Counsel had the matter in consideration, before they pleaded; and this is no new Privilege you claim, but an old law, that you cannot depart from — Would have them committed to the Serjeant's custody, and the next hour he shall be as forward as any man to release them.

Sir *William Hickman.*] 'Tis a plain case, that the Counsel considered whether they should obey the Lords, or give up your Rights and Privileges — Would have both kept up, but the way of proceeding against the Counsel he submits to you.

Col. *Titus.*] Would consider what does excuse the Counsel, and what does not. They are not to be excused, because they are lawyers; for they who know best what your Privileges are, know the better that they offend in breaking them. He is not for punishing them, because the Lords will lay them by the heels, if they do not plead. If that be made an excuse, the Lords will threaten them — This is not creating a new Privilege — Members ought not to be drawn from their attendance here. This is not a new Order, but an old Right — By not waving Privilege you undo many men, and hurt your own Members very much by it. If you punish these lawyers, your justice may be called in question,

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but in sending them away, without any thing more, you do not prudently. To satisfy therefore your justice and prudence too, would have them called in, and reprobred.

Mr *Swynfin.*] The measures he would have you take are, how far this matter of the lawyers concerns you, as to the difference between you and the Lords. You could expect no other account from the Counsel than you have had—If you could acquit them without prejudice to you, he would consent to it willingly. He looks not upon the Case, as, whether Mr *Dalmahoy* can waive his Privilege, but whether you will waive yours. He looks upon the lawyers as Counsel for the Lords against you, more than the Client, and to be considered as such. They tell you, though they were not served with the Order, yet that they had taken notice of the difference between the Lords and you about Privileges, and know you had waived none of them. He thinks they had taken notice of your Vote; for Sir *Nicholas Crispe* swears, at the Lords Bar, “That the Counsel could not appear to plead his Cause, because of a Vote of yours.” He must believe the Oath, if the party be not forsworn—The Counsel will not say, they appeared voluntarily, but for fear of the Lords they did. When a Privilege is broken below, you go not to the Courts, but upon the persons employed in the suit. The same Case is here. The Lords say, “they will send them to the Tower,” and they tell you so. If you can and do say nothing to the Counsel, you do, in fact, give up the point to the Lords. This is the Case of Sheriffs and Bailiffs—He honours the Counsel, as learned men, and they stood out the thing twice—if they knew not your Vote, it was affected ignorance. He must think, by that Order, interest and necessity oblige you to punish the Counsel, and to commit them to the Serjeant.

Mr *Sacheverell.*] Has great respect for some of the gentlemen that were at the Bar, but much greater for the House. This is but barely a resolution of what was ever your right before. It seems strange that this should not

be a breach of Privilege ; but it put a great hardship on the Counsel, whether they should undergo the Lords displeasure, or break your Privilege. The Lords have taken all ways to break it, and, if the Lords find this successful, they will protect the Counsel that shall come after these. If you set no mark upon this, the Lords will call it protection to any for the future. Would therefore have a mark set upon the thing, but he leaves the severity to you.

The Counsel were ordered into custody of the Serjeant.

[The Question for committing Serjeant *Pemberton* was carried
154 to 146.]

Sir *John Fagg*, for breaking the Privilege of the House, was sent to the Tower.]

Sir *Thomas Littleton*.] Mr *Dalmaboy's* Case is much worse than Sir *John Fagg's*, because you did not prohibit *Fagg* to proceed, though he acquainted you. In this Case your Member waves his Privilege, in a Court that takes it *de jure*, without acquainting you with it at all.

Sir *Adam Brown*.] Mr *Dalmaboy* could not tell you then it was depending, when it was not. The Counsel were for *Lady Bowyer* and *Lady Cranbourne*. Had *Dalmaboy* done otherwise than what he told the Speaker, it would have appeared that he relinquished the business wholly. If *Lady Bowyer*, &c. had good success, he should have the benefit, and if bad, his share thereof likewise.

Mr. Secretary *Coventry*.] Sir *John Fagg* acquainted you with the Appeal ; Mr *Dalmaboy* did not ; but *Fagg*, before he had your resolution, goes to the Lords Bar. After he saw your Order, he appears not any more. In this, under pretence of saving your Privilege, you lose it—Taking all the manner of the thing, you have no reason to send *Fagg* to the Tower.

Sir *Thomas Littleton*.] When a man is misrepeated, he may speak again to explain himself. The Question was not, “ Whether putting such an Answer in, by *Fagg*,

Fagg, was such a Degree of waving as amounted to a retraction.”

Sir *Thomas Lee*.] He thinks it in no man’s power to wave Privilege to your destruction. The Lords would not proceed till they had all parties in Court; not an Order *ex parte*, but on full hearing—*Churchill* said, “he had witnesses to prove that Mr. *Dalmaboy* gave his consent to the proceedings.” That’s a great care of your Privilege to encourage Counsel to plead against them. You thought no more of *Fagg*’s Case, and the thing sleeping, he put in his Answer,—but not one step neither in proceeding. Had *Dalmaboy* served you thus—He used no endeavours to hinder the proceeding; the Counsel appear against him, by his consent, and for it you send them to the *Tower*. ’Tis strange that now you should scruple to send your Member thither also.

Sir *William Coventry*.] He does not remember this allegation against Sir *John Churchill*, if it be of any validity, now turned upon your Member—A word in the Order may be by the error of the Clerk.—*Dalmaboy* made a party in the Appeal, and no Counsel appearing for him—What had passed in the proceedings must be the ground—before your Order—In fourteen years this will be the first Member you sent to the *Tower*. Whatever is your conveniency, let justice be your foundation. ’Tis the rule of justice, that a law should be known without retrospection, for a fact committed—Privilege, he finds, now has a new temperament. This was never distinguished till this occasion—Now a man knows his landmark.—This is quite contrary to rules of justice. *Dalmaboy* told you, he was to claim under *Lady Bowyer*.—He has perfectly obeyed your Command—You had two things on foot, “That the Lords had no right of Appeals, and upon no account your Members to be called to answer.”—You have declared, “that no lawyer should appear against your Member.” The gentleman has taken all possible care—That his Counsel disclaimed his retaining them, and no man declared to appear for him.

Upon the whole matter, it is of dangerous consequence, to punish by retrospection, and he is perfectly against it.

Sir Richard Temple.] He cannot see much difference in the case between *Dalmahoy* and *Fagg*—It is said, “a retrospection is dangerous.” You must then reverse the sentence against the lawyers. Does it appear to you that *Dalmahoy* let his concern go on in the crowd with the rest? The Counsel took it that he waved his Privilege—Judgment went by permission, if not by avowed consent, and he thinks *Dalmahoy* in the same predicament with Sir John *Fagg*.

Sir John Ernly.] If this Case of *Dalmahoy*’s did not essentially differ from Sir John *Fagg*’s, he should be very partial, if for him—*Dalmahoy* has done nothing since your Order to the contrary.

Mr Sacheverell.] Before you put the Question, would have gentlemen consider what they have done. If *Dalmahoy* is not concerned, you must retract the Vote against the Counsel. This argument for *Dalmahoy* might have been much stronger for *Fagg*—than now.

Sir William Coventry.] He that spoke last has almost imposed speaking upon him. That Vote referring to the lawyers, they are punished for waving *Dalmahoy*’s Privilege, and now you will punish *Dalmahoy* for not waving it.

Mr Child.] He takes *Dalmahoy* to be guilty of the same fault with *Fagg*. Nothing can assert your Privilege more to posterity than this, though he has no unkindness for *Dalmahoy*.

Serjeant Maynard.] There is great difference, when Counsel appears against your Member. The 19th of April the Answer was put in; the 12th of May was the Hearing. This is a Petition against him; he makes Answer, and you make an Order against it, unless he prosecuted, and prayed hearing—There is a difference between one that appears without leave, and one that asks leave—in what condition is a man that puts his Answer into a Court of Judicature?—For when your pleasure was

was known, he did nothing; and must abide by his Answer after.

Mr *Sacheverell.*] *May 3,* the Order was about *Fagg*; *Dalmaboy* put in his Answer after.

The Question for sending Mr *Dalmaboy* to the *Tower* passed in the negative.

Sir *William Coventry.*] *Dalmaboy*, having withdrawn, during your Debate, ought now to be called to his seat.

The Serjeant was sent to bring him in accordingly.

Col. *Birch.*] If any Member has petitioned the Lords, as is said, he desires he may go to the *Tower*.

Mr *Garroway.*] You are now upon Privilege, and would go on upon all the cases, as to the *modus* of punishing them.

Sir *Nicholas Carew.*] Moved for Sir *Nicholas Crispe* to be sent for in custody—The same reason, as for the Counsel. There are three of them, *Nicholas*, *Thomas*, and *John Crispe*.

The Counsel was assigned by the Lords, *May 27.*

Sir *Thomas Lee.*] Would not have this case relative to *Dalmaboy*, because he is not voted to the *Tower*; but “for bringing an Appeal against your Vote, being your Member.”

Sir *Thomas Littleton.*] Would send for them to answer, but not in custody. *Crispe* cannot legally take notice of your Order.

Sir *Charles Harbord.*] This is a Cause against six men, and one of them a parliament-man.—This may obstruct all the justice of *England*—A dangerous consequence!

Ordered, That Sir *Nich.Crispe*, [Mr *JohnCrispe* and Mr *Thomas Crispe*] be summoned to attend this House to-morrow morning.

Sir *John Coventry.*] You have now punished a Member for appearing at the Lords Bar without your leave—What will you do with a Member that petitions the Lords against another Member? Sir *William Basset* petitions against Mr *Nosworthy*.

Sir Edward Baynton.]—Not usual, in former times, to name a Member to avouch a thing.

Col. Strangways.] Where a thing may be had upon record, you do not usually call for evidence.

Sir Richard Temple.] Sometimes a petition is received, and not entered. Would have your Member (*Basset*) speak, before you give judgment upon him.

[The Committee appointed to inspect the Lords Journals, were ordered to see what proceedings they find in the petition alleged to be delivered by Sir William *Basset*.]

Wednesday, June 2.

Reasons for a Conference in answer to the Lords, (see *May 31*) as reported by the Committee, and this day agreed to by the House.

“ The House of Commons do agree with the Lords, that Conferences between the two Houses of Parliament, are essential to parliamentary Proceedings, when they are agreed in the usual and parliamentary way; but the manner of the Lords agreement to a Conference, to have been upon *Friday the 28th of May* last, at ten of the clock, in the Painted Chamber, with limitation and Proviso, was such, as did necessitate the House of Commons, to forbear to meet at that Conference; and gave the first interruption to parliamentary proceedings between the two Houses.”

“ For that the Conference, desired by the Commons, was upon their Privileges, concerned in the Answer of the Lords, [to a Message of the House of Commons sent to the Lords] the 17th of *May*, in the Case of Mr *Onslow*; to which the Lords did not agree; but did only agree a Conference concerning their Privileges in general, without reference to the case of [the said] Mr *Onslow*, which was the only subject-matter of the desired Conference.”

“ The limitation in the Lords agreement to the Conference, with Proviso, “ that nothing be offered at the Conference, that may any way concern the Lords Judicature,” is, in effect, a denial of any Conference at all upon the subject upon which it was desired; which ought not to be.”

“ The Judicature, which the Lords claim in Appeals against a Member of the House of Commons, and the Privilege of that House, in that case, is so involved, that no Conference can be upon the latter, without some way touching the former.”

“ That

"That this manner of agreeing to a Conference, with any limitation or Proviso, is against the course of proceedings between the two Houses of Parliament, in coming to Conferences; and doth seem to place a power in the managers of such Conferences, to judge whether such Provisoes be broken, or not; and accordingly to proceed, or break off the Conference, upon their own judgment."

"The House of Commons doubt not, but that when the Lords have considered of what is desired at this Conference, the good correspondency, which the Lords express they desire to continue, between the two Houses, (which the Commons are no less careful to maintain) will induce them to remove the present interruption of coming to Conferences; and therefore to agree to the Conference, as it was desired by the House of Commons, upon the Privileges of their House, concerned in the Lords Answer to the Message of the House of Commons, in the Case of Mr *Onslow*."

"That the particular limitation, "that nothing be offered at the Conference that may any way concern the Judicature of the Lords," appears unreasonable; for that their Lordships Judicature in Parliament is circumscribed by the laws of the land, as to their proceedings and judgments, and is, as well as all other Courts, subjected to Parliament."

These Reasons were soon after delivered at a Conference by Sir Thomas Lee.

A Message from the Lords, by the Lord Chief Justice *North*, and the Lord Chief Baron *Turner*, viz. "That the Lords desire a Conference with the House to-morrow, at ten of the clock, [in the Painted-Chamber] upon matters of high importance, concerning the Dignity of the King, and the Safety of the Government."

Sir Thomas Lee.] Wonders, if the matters are of so high importance, that we heard no sooner of them from the Lords.

The Conference was agreed to.

The Speaker.] Moved to have the Serjeant give an account of what he had done, in pursuance of the Warrant about taking the Counsel into Custody.

The Serjeant said] He repaired to the Lawyers several houses, but finding them not there, he found Sir John Churchill at his chambers; at the same time, about eleven o'clock at night, came the Usher of the Black Rod, who did discharge all persons from attaching the Counsel, and said, "he had order to repair to the Lord Mayor of London, and the Sheriffs, to be assisting

to him." He required Sir *John Churchill* to be his prisoner, and that he must appear at eight of the clock, the next morning, before the Lords—This morning, as soon as he could meet with any Members to advise with, he spoke with Sir *Thomas Lee*, and Mr *Sacheverell*, who advised him, That, notwithstanding what the Black Rod had done, he should retake Sir *John Churchill*. Soon after, *Churchill* passed by in his coach, and, he serving him with the Warrant, engaged to come to the House of Commons, and give an account of what the Lords did—He would not let him go again into his coach, but took another coach. *Churchill* went to the Lords House, and he had two Lords with him, to whom, he said, he appealed, "Whether he must be a prisoner to the Black Rod, or appear at the House of Commons." The Lords had many footmen about them, and they called for the Black Rod, and rescued *Churchill* out of his hands.

The Warrant was read, viz. "To take into Custody the Counsel, &c. to answer Breach of Privilege, &c."

Sir *Thomas Lee*.] The Serjeant desired, this morning, to speak with him, and told him, "that the Black Rod had taken away Sir *John Churchill* from him." He asked him, "Had you no-body with you? You ought to have taken aid." Believes the House will not be satisfied with this answer—'Twas upon his advice that he went to his coach, and spoke with him; and thinks what he advised him was for the service of the House.

The Speaker.] He invited them (the Counsel) to dinner with him, and the Serjeant brought them in Custody. The Serjeant told him, he stayed for the Order for commitment of them, but could not have it till nine of the clock at night, neither that Order, nor the other for Sir *John Fagg*'s commitment; and said, the Clerks would not make it out; and the Clerks say, the Serjeant would not come for it. He (the Speaker) had no Order till that time—but sent out his Warrant for taking the Counsel into Custody.

Sir *Thomas Lee*.] Moves, that the Speaker may have the Thanks of the House, for his care in the business.

Mr *Powle*.] Persons present in Court, and not discharged, have sufficient commitment, without an Order from the Speaker, they being not discharged of their commitment, and being brought in Custody.

Mr

Mr Vaughan.] The Speaker has granted a Warrant, without Order from the House, which ought not to be.

Sir Thomas Lee.] Thinks that the Speaker has done the House great service.

Sir Richard Temple.] The persons not being sentenced at the Bar, the Serjeant is not answerable for them, and discharge is implied by it.

The Speaker expressing some unwillingness, through modesty, to have the Thanks of the House, having done nothing but his duty, the Thanks of the House were *Ordered* him, for his great care [of the honour and service of the House] in issuing his Warrant, for apprehending and committing the Counsel.

Mr Garroway.] The Serjeant has given an account of Sir *John Churchill*—Would know what is become of the other three Counsel. He tells you, he has taken *Churchill's* parole—Would know what Order he has so to do. What condition are you in, when he takes upon him to judge when he must let people go?

The Speaker.] Thinks the Serjeant a Counsel for the prisoners. He told the Speaker every moment, that the Order was coming for their commitment, which stopped him from sending his Warrant sooner.

Sir Robert Carr.] 'Twas strangely contrived between the Serjeant and the Black Rod, to meet just at a time at *Churchill's* chambers—Moves to send the Serjeant to the Tower.

Col. Sandys.] The Serjeant tells you, he cannot find any of them but *Churchill*—He is sure that *Pemberton* was with him between eight and nine o'clock at night.

Mr Sawyer.] In other Courts, if an Order be made, they make no Chamber Order. The Order of Court is sufficient to take the person by; that Order is a justification to the Officer. When the House does expressly order it, the Speaker's Warrant is not necessary. Had the Order been taken out, you might have had them in Custody.

Col. Birch.] The Order was—"They should be committed by the Speaker's Warrant."

The

The Order was read. “Ordered, That they, &c. shall be taken into Custody of the Serjeant of this House.”

Sir Thomas Lee.] ’Twas not long since the Question was here about the Serjeant’s taking mens words. He had servants with him, and yet he attached not *Churchill*, who promised him to appear. It may be, ’twas an engagement, before *Churchill* promised the Serjeant, and he would keep his engagement. As long as you have such a Serjeant, you will never keep a prisoner. Remove, therefore, your Serjeant first, and then think what to do about the Counsel.

Col. Sandys.] He knows in what times the Serjeant was bred, and thinks him not fit to serve you any longer.

Sir Winston Churchill.] *Churchill* was prisoner to your Serjeant, and told you he was in Custody. Would know how he and the rest came out of Custody. He was at *Churchill*’s chambers at five o’clock last night; and, by all his discourse, he thought himself a prisoner, and had no other discourse with him but as a prisoner. But if taken by two authorities, possibly he was more inclined to obey him that came best provided by authority.

The Speaker.] Told the Serjeant, “that if he permitted the Counsel to go at large, at supper, he would move the House to provide him a breakfast.”

Sir Robert Howard.] Sometimes we have two Orders quite contrary to one another, and he has compared the Order in the Case of Sir John Prettyman. The Serjeant tells you, “he could not get the Orders;” but had he presented the Speaker’s Warrant, in apprehending *Churchill*, he might have come to his end; there could be no excuse.—But your Serjeant having an Appeal depending before the Lords, he would have something done upon your Serjeant for neglecting his duty, and upon the Clerks for theirs—Would commit the Serjeant.

Sir Nicholas Carew.] By all this that has been said, the Serjeant seems to be rather Servant to the Lords than the Commons. He began the controversy first with the Lords, in *Shirley*’s commitment, by his officers. If you take

take him not presently, he may go to the Lords for protection.

The Serjeant [Sir James Norfolk] was sent to the Tower, for [betraying his trust, in] not executing his office, in detaining the Counsel in Custody, and bringing them to the Bar, (having them committed to him) to answer their breach of Privilege against this House.

Col. Birch.] Standing up to speak, and the Speaker standing up likewise, said, One of us must sit down.

Mr Garroway.] One Serjeant, it seems, is gone after the other, but would not stop the business.

Sir Thomas Lee.] Would not trouble himself with any man's patent, or title, about this place of Serjeant— You may inform the King, by some of the Members of the Council, that your Serjeant has betrayed his trust, and desire the King to let you have another Serjeant,— for having neglected the service of this House.

Sir Richard Temple.] He has betrayed you in every trust you have employed him in. Here was one Colonel Colepepper, that sat several days here, and was no Member, and the Serjeant let him go at large, when committed to his custody. He corresponds with the Lords; he has had it from several Lords. If any man has ever betrayed his trust, the Serjeant has.

Sir Thomas Lee.] Sir Nicholas Stoughton, though ordered in custody, retains Counsel against Mr Onslow, your Member, and goes about town at large.

Serjeant Seys.] The Serjeant must be impeached, by a *scire facias*, to avoid his patent, as a misfezance and neglecting his office.

The Speaker.] If the Serjeant went with his mace, he has his authority, as a tipstaff, from the King's Bench— When persons go out of the presence of the House, you must send a Warrant to take them into custody.

Mr Garroway.] While you are questioning the Serjeant, he is run away—That is neglect of his trust, and would take all his Privilege from him, he deriving it from his attendance upon the House.

The

The Deputy-Serjeant *Harsnett*, informed the House, “ That he had been in several places, that Serjeant *Norfolk* frequents, and cannot hear of him.”

Ordered, That he should have a warrant to find him, and bring him in Custody.

Ordered, That the King be addressed to appoint another Serjeant at Arms [to attend this House] instead of Sir *James Norfolk*.

Sir *William Coventry*.] Privileges for Servants are not for their own sakes, but to attend their masters. He thinks that the Serjeant has no more Privilege than you will allow him, and no Privilege equal to your Members.

Sir *Thomas Lee*.] Would have the Order so made, that the Lord-Mayor, the Sheriffs, and all officers, may assist you to attach the Counsel, in case of escape.

Sir *William Lowther*.] The officer that now attends you is but Deputy-Serjeant—Should *Norfolk* revoke his deputation, your Warrant cannot be served by him.

Sir *William Coventry*.] There is no such thing *in law*, as a prisoner “ upon parole;” ’tis only a word *in war*. If the matter of fact be not made out, that all, except *Churchill*, were in custody, we shall be put to it, in a Conference with the Lords.

Sir *Winston Churchill*.] There is no escape in Sir *John Churchill*, but your Serjeant so ordered it, that the Black-Rod did over-power him. He took it for his great Privilege to appear before the House of Commons, not doubting but to clear himself, and he took himself to be in custody.

The Speaker.] When he sent for the Counsel to dinner, he called for them in custody of the Serjeant.

Serjeant *Jones*.] By taking the Counsel into custody, he supposes you intend “ legal custody.”—They were only summoned to attend at the Bar, and when they were withdrawn, you ordered them into custody of the Serjeant at Arms. They cannot be taken into custody by parole, but by warrant. However they were in custody, they were not “ legally” so, and so ’tis no the escape.

Mr Sawyer.] Thinks it “legal custody,” because they were never discharged your Serjeant’s Order. Therefore would have them taken into custody according to the former Order.

Mr Garroway.] Would have the Warrant run—“By his breach of trust for not detaining them as he ought to have done.”—So charged, no prejudice to the Counsel.

Sir Winston Churchill.] They were forced—The Serjeant told him, that the Black Rod took Churchill by one sleeve, [of his gown] and he by another, and that the Black Rod had men ready to force him. He replied, “The Serjeant should have gone better provided for such a force.”

Sir Thomas Lee.] You will not say that the Lords took him out of your hands; would rather have the Lords say it than you, and would have as little trouble upon you in it as may be.

Serjeant Sseys.] The Question will be, below stairs, who had the *prior* custody, in an escape by force.

The Speaker.] The Counsel owned themselves in custody of the Serjeant, and went with him to dinner, as such.

Mr Vaughan.] Your Lobby is part of the House, and they were not discharged from thence.

Sir Thomas Meres.] The word of your Serjeant, by your direction, upon any disorder, to take a man, is a good custody.

Mr Sawyer.] Before an actual apprehension, there must be a “custody;” unless your officer returns an escape, you cannot take notice—Would put a Question, that you may not differ. If your Order refers to your former Order, ‘tis enough.

Sir Richard Temple.] If the lawyers be protected by the Lords, they cannot be but as servants, or attendants—There must be an actual custody, at least—The Serjeant must tell them so. Would recite in the Warrant, “that whereas there was a failure in the execution

of

of the last Order, in taking them into Custody, you now grant your Order for doing it."

Mr Garroway.] You have no ground for a new Order, if you allow a breach of execution in your old Order.

Sir Thomas Meres.] Without making any other recital of escape, would order the lawyers to be brought to-morrow morning to the Bar.

Col. Birch.] Unless they were in Custody, by your former Order—*Churchill* said, "he was in Custody; the Serjeant had him by one sleeve, and the Black Rod by the other." You must have a care that he was in your Custody.

Sir Edward Baynton.] "They had him by the sleeve." —Would know which sleeve makes him in Custody. One for us, and one for the Lords. *Churchill* said, "he would be a true prisoner," as the Serjeant tells you. He has not heard one true word from your officers, since he came into the House.

Col. Birch.] Let it not be forgotten, that he was not in Custody before they had him by the sleeve.

Mr Secretary Coventry.] The Counsel have not escaped, because they went from no-body. If their word be their Custody, they are in Custody. The Lawyers to be in two Custodies, will be Popery; the same body to be in two places at once.

Mr Powle.] If they escaped upon parole, 'tis a negative escape. If there be any doubt of the custody, 'tis upon *Mr Porter*, but in the other three 'tis plain. The Question will be, "Whether *Peck*, *Pemberton*, and *Churchill*, were in the Custody of the Serjeant."

Whereas Serjeant *Peck*, Serjeant *Pemberton*, Sir *John Churchill*, and *Mr Porter*, were by virtue of an Order, &c. taken into Custody, and, by the negligence of the Serjeant, have made their escape:

Ordered, That they be brought in Custody to the Bar, to-morrow morning, &c. [by *Robert Read*, Esq; the Serjeant at Arms now attending this House.]

Thursday,

Thursday, June 3.

The ingrossed Bill of *Habeas Corpus* was read [a third time].

Sir *Thomas Littleton.*] A person being in Custody of another, and not of an officer, the Bill lays a pecuniary penalty upon the person that detains him so in Custody, and disability, &c. of the deputy, or deputies, or any, in whose custody the prisoner shall be—We may [otherwise] imprison one another. *Homo homini lupus.*

Sir *John Mallet.*] The word “other person.” Knows not whether Messengers of the Council be officers in law, or not.

Sir *Thomas Lee.*] “Obtain a Writ of *Habeas Corpus*”—He likes not the word “obtain;” as if it were not a Writ of Right—Would have it altered in the Bill.

The Bill passed, and was entitled; An Act for preservation of the liberty of the King’s subjects.

Mr *Vaughan* reports the Conference from the Lords. (The Lord Privy Seal [Earl of Anglesea] managed it,) *viz.*

“The Lords do take notice of the House of Commons their ordering into Custody of their Serjeant, Sir *John Churchill*, Mr Serjeant *Peck*, Mr Serjeant *Pemberton*, and Mr [Charles] *Porter*, Counsellors at Law, assigned [by their Lordships to be of Counsel] in an Appeal heard at their Lordships Bar [in the Case of Sir *Nicholas Crispe*] against the Lady *Bowyer*, Mr *Dalmahoy*, and others.”

“*The Lords do adjudge the Order for their imprisonment to be illegal, arbitrary, and the execution thereof a great indignity to the King’s Majesty, in his highest Court of Judicature in the kingdom**, the Lords in Parliament, where his Majesty is highest in his Royal estate, and where the last resort of judging, upon Writs of Error, and Appeals in Equity, in all causes, and over all persons, is undoubtedly fixed, and permanently lodged.”

“It is an unexampled usurpation, and breach of Privilege against the House of Peers, that their Orders or Judgments should be disputed, or endeavoured to be controled, or the execution thereof obstructed, by the Lower House of Parliament, who are no Court, nor have authority to administer an Oath, or give any Judgment.”*

“It is a transcendent invasion on the right and liberty of the subject, and against *Magna Charta*, the Petition of Right, and

* These words in omitted in the Journal.

many

many other laws, which have provided, that no free man shall be imprisoned, or otherwise restrained of his liberty, but by due process of law."

" This tends to the subversion of the Government of this kingdom, and to [the] introducing [of] arbitrariness and disorder; because it is in nature of an injunction from the Lower House, who have no [authority nor] power of Judicature over inferior subjects; much less over the King and Lords, against the orders and judgments of the Supreme Court."

" We are farther commanded to acquaint you, that the Lords have, therefore, out of that justice which they are dispensers of, against oppression, and breach of laws, by judgment of this Court, set at liberty, by the Gentleman Usher of the Black Rod, [all] the said Serjeants and Counsellors, and prohibited the Lieutenant of the Tower, and [all] other keepers of prisons [and] jailors, and all persons whatsoever, from arresting, imprisoning, detaining, or otherwise molesting, or charging, the said gentlemen, or any of them, in this case: And if any person, of what degree soever, shall presume to the contrary, their Lordships will exercise the authority, with them intrusted, for putting the laws in execution."

" And we are farther commanded to read to you a Roll of Parliament, in the first year of the reign of King *Henry IV.* whereof we have brought the original with us. N° 79.

In *English*, " That the Commons come and show to the King, " That, as Judgments in Parliament belong only to the King and Lords, and not to the Commons, except in case it please the King, out of his special grace, to acquaint them with those Judgments, in favour to them, so that no entry ought to be made prejudicial to them, to make them parties now, or hereafter, to any Judgments given, or hereafter to be given, in Parliament." To which the Archbishop of *Canterbury* answered, by the King's command, " That the Commons are but even petitioners and suitors, and that the King and Lords have ever had, and ever shall have, right to the Judicature of Parliament, as the Commons do themselves set forth; saving, that the King will have their advice, and assent, in making laws, and granting of subsidies, and doing such things for the public good." This Order to be observed and kept in time to come.*

[Debate.]

Mr Garroway.] They are not read as papers from the Lords, but as notes from your Reporter, and not to be entered as the Lords paper.

* This Record is not entered in the Journal.

Mr

Mr Mallet.] Only rises up to assert your honour, and the Commons of *England*—He opposes the reading again of the paper, which is presumption upon presumption, from the Lords. The Lords are not, in this capacity, the highest, nor supreme Court. In the paper reported, they assert themselves, “the highest Judicature,” excluding the King *in pleno Parlamento*.

Sir John Birkenhead.] This Roll of *H. IV.* was when a bloody Usurper got into the Throne, and then he took the same House of Commons that placed him there, without calling a new one by Writ: He would not have a new one.—That usurping King made that Roll, and those Lords and Commons, that had murdered his predecessor, established him. That Roll was never printed nor published, and the first part of that Roll is obscured and lost—*Arundel*, Archbishop of *Canterbury*, that traitor, contrived this. To make this latter part of the Roll a precedent to pronounce against the Commons,—He wishes the Lords had never urged it, and that he had never lived to have heard it.

Serjeant Maynard.] The occasion arose not from the generality, but from your Member—There was a difference between the Earls of *Derby* and *Lancaster*—Repeals of what was done in the Parliament of *R. II.* No Parliament was called anew, but those that had acted before, were declared a Parliament. The Commons would not join in that Judgment of deposing the King. (Archbishop *Arundel* was he that suppressed the *Lollards*.)—There the Commons were petitioners, and demanders of their Right—They may still demand it—All the great words, in this Conference, are a supposition, that what you have done is illegal—Observes only, that the Question betwixt the Lords and the Commons is not so much as touched on in this Conference.

Mr Powle.] The Lords words, in the Conference, are very high, but their reasons very weak, in the Roll *H. IV.* No. 79.—He has perused that Roll—The thing the Lords mention was done in a black time; but lay that aside, and take only the Record, and it makes against

the Lords. 'Tis a petition that the Commons might not be parties to a judgment given against the King, R. II. The Lords would have nothing of the Commons upon record.—The Archbishop of Canterbury, Arundel's answer—“ The Commons are not to be Parties, in judgments given by the Lords, only in subsidies.” Observe, that when the Lords gave judgment, it was by petition from the Commons—They received the petitions, and judged the fitness of them to be brought up to the Lords, as a Grand Jury. The Judges give judgment, but cannot proceed, till the bill be found by the Grand Jury. The Lords agreed judgment, but not till the Commons asked it of them, which is the entitling of us to it by petition. Would consider of the paper against to-morrow, and doubts not but, upon Conference, to convince the Lords.

Mr Garraway.] This judgment the Lords gave is but one of the Rolls, and is none of the statute Rolls—The Lords have showed, he hopes, all they have; they scarce own you to be a part of the legislative power —Would have the Roll perused, and take ground from that to-morrow.

Sir Richard Temple.] To tell you, that your proceedings are “ illegal, arbitrary, and against the dignity of the King,” obliges you, in honour, to answer the Lords. Those arguments the Lords use had influence upon the late times, as much as any thing. This authority of the Lords Judicature, the late rebellion grew under, as much as any thing. At the same time that they exalt themselves above every thing, they do it above you. This makes you “ a Lower House” indeed, and to be brought to wear the Lords coats and badges—below their footmen. He observes on the Record, “ That it shall be in the same manner, the Commons demand it.” 'Tis allowed they shall be demandants in it all; therefore, this Record, though made in ill times, when the Parliament was no Parliament, yet will make for us, since it runs “ as the Commons demand.” —The Lords would make

make the Commons parties in things they give no consent to.

Mr Sawyer.] Would not have the Lords Paper entered into your books, untill farther consideration. He has heard soldiers say, "that the danger is past, when the noise of guns is heard." In this paper, he sees nothing but noise, but no Answer to our Reasons at the Conference. Observes that this Record has been always insisted upon, as the only *Diana* the Lords have. In King James's time, when it was insisted upon, it showed nothing, but that when the Commons were loyal, the Lords have been otherwise. The Record is not a protestation against all judgments (*Arundel* answered, "hereafter the sole judgment in the King.")—They were not an illegal Parliament, but an undutiful one—by private means had murdered R. II. The Lords showed you not one original matter. Ever, before this Record, the Commons petitioned, and in this they did it. Would have some mark set upon the Message, and consider of it against to-morrow.

Mr Swynfin.] Observes only, let this Record be what it will, it no way concerns the point in difference betwixt the Lords and us. This Record cannot fortify them any farther than in such manner, as to give judgment upon the whole House of Commons. The root and ground of all is your Privilege; and, upon this, you have imprisoned the Counsel, for invading your rights, and this is the ground of the matter. The Lords say "that all manner of judgment is theirs—That of your particular Members—to all Courts—Goes to all.—No power to imprison against *Magna Charta*—You cannot imprison, because you cannot try."—How often have the Lords claimed right, that no Commoner has power to meddle with them? The Lords imprisoned Mr Fitton for a long time—He wonders where the Petition of Right and *Magna Charta* was then. If it be granted, that you have no judgment left, you have none over your own Members, which you have the only right of judging, during Privilege. He observes the whole

Paper tells you, " You have no power of judgment in any case," which gives the Lords the whole power, and you must go to them for all judgment.

Sir *Thomas Lee.*] He cannot agree with those that are for adjourning the Debate. He thinks you are satisfied for another Conference, and 'tis but the loss of a day ; the sooner you set your Members at work about the Conference, the better. Your Members, at the first sight, see the weakness of the Lords Paper—They will punish the Counsel, according to the execution of the law intrusted to them—Would have a Committee appointed to draw Reasons against the Lords Reasons.

Sir *Robert Carr.*] Great words are commonly used, when no great reason can be given: Would, in the Conference, show as much reason as they. By the Reasons the Lords have given, it seems they have risen too early, after having sat up so late the last night.

Mr *Walter.*] Is not for adjourning the Debate, but for a Committee to draw up Reasons, upon the Debate, for Conference—Observes the appetite the Lords have for this Judicature. You ask always three things of the King, at the opening of a Parliament, not of right, but of grace ; freedom from arrests ; freedom of speech ; and access to the King's person. The King has given them us, and the Lords take them away—*Totum ex paribus.* If the Lords can judge the whole, they may judge parts. See the danger of this Pretence ! The Lords, in time, may pretend, not only to jurisdiction over us, but to an explanatory Power of the Law. In the Long Parliament, the Lords voted " that the King made war against the Parliament." That Vote came down from the Lords to the Commons, but would not pass here—Possibly, sometimes, this might be called, " the Lower House ;" but when the Lords send us a Bill, they say, *soit baillé aux Communes.* The foundation of the castle is the noblest part—The Commons are the foundation ; the Lords are the superstructure and ornament, the pinnacles, and parapets. Armies are paid by the Commons, they maintain the war. Let the Lords remember,

ber, that they are Lords Spiritual and Temporal. The Lords Spiritual have no advantage, though named before them. Lord Chief Justice *Coke* told him once, in a clashing betwixt the Chancellor and Chief Justice, “*Additio probat minoritatem*, in a great contest for priority.” He never saw a Bill of Subsidy lost there; but once the Lords altered the rates in a Bill, and the King lost still by it. It seems, by this Conference, the Lords would have as much power over us, as we have over our Serjeant. Would have a Committee to draw up Reasons for a Conference.

Mr Attorney *Montagu*.] The Lords, in this Conference, have “lowered” us, that we never were such “a Lower House” before. They say, “that our Order is illegal, arbitrary, an usurpation, and invasion, a subversion of the government”—Should such words be said of any private person, knows not what would come of it. Moves for a Committee.

Mr Secretary *Coventry*.] Would always deal with our adversaries, where you are strongest. The Lords have given us ill words; we cannot give them worse; he would give them better. If what the Lords have said be true, we have wronged every commoner of *England*, them, and the King, and knows not whom we can wrong beside. *Waller* tells you of the late times—We have now a right King, a loyal House of Commons, and hopes we shall comport ourselves so well for the King, that we shall do well enough with the Lords. The observation made upon the Record is, “that there was then a wrong King, and a wrong House of Commons.”

Sir *Charles Wheeler*.] When the Lords shall hear these words repeated, that they have given us at the Conference, they will scarce believe them to be their own. Many of them are like new converts—Shall say no more of them.—Why did the Lords trouble themselves with the Commons in the Record, if they thought they had no interest in the matter?

Sir *Thomas Meres*.] This is a new original Conference from the Lords, asked on a subject-matter of its own;

such a one as they would hardly grant to us. 'Tis a Conference "on the safety of the King and Government." One would think that the foundations were shaken, and — *Parturiunt montes*—It brought forth four Lawyers; that is really the subject-matter of the Conference. They always tell us we ought to particularize the matter of our Conferences. From what they have told us, there is another matter that makes them winch; they know not how to tell you of it, because they cannot parliamentarily take notice of it. Do but look towards a horse's sore back, and he will winch.—Our Votes about Appeals we have passed—They say, "all judgment is in them," and now we begin to consider whether they have any. We meddled at first with our own Privilege, for support of King and Government; we must argue the more safe way for it, and then upon the Record. When the Lords had power, it may be three or four of them could face the King with an army. The more back you go into record, you will find the Commons have the more right to what they claim. Consider that the Commons have got lands since that Record, and got off their coats and badges—"A supreme Court of Judicature," they style themselves—'Tis strange, when we are all under one King—Would have a Committee to draw up Reasons for a Conference upon the Debate.

Mr Vaughan.] Is melancholy, not for ourselves, but for the Lords—that they will have their Power uncontrollable and indisputable—we have reason to argue them down. All this is but an abstract of a Case-Book, (of Lord Holles, written, as is said, by him) but such language they give us, as is not sufferable amongst private men. At this rate, your Mace may be taken from you.

Colonel Birch.] When he heard "the Dignity of the King, and safety of the kingdom," he was afraid the Lords would demand a sum of money of us—He was so chid, at the Conference, amongst the rest, that his ears are scarce cold yet. They began with the little mouse "of imprisoning the Lawyers," and "the Lords judge

judge it illegal and arbitrary ; an indignity to the King, and transcendent usurpation, and invasion of the Government.”—He knew the Lords could not make it good in *English*, and therefore they would do it in *French*, by the Record they read. They told us, “they had set the Lawyers at liberty, and would do as much by any that should imprison them again.”—The Painted Chamber was full, and this was a Remonstrance, with a witness. He knows not how to answer Reasons, when none are given. But if you take no notice of theirs, the whole nation will.

[*Resolved*, That a Conference be desired with the Lords, on the subject-matter of the last Conference.

Mr *Porter* was ordered to be apprehended ; and Sir *John Fagg*, on his Petition, was released.]

Friday, June 4.

The Speaker.] Gives the House an account, that, in his passage through the Hall, he saw Serjeant *Pemberton*, who paid him no respect, though near him, or very slightly ; upon which he sent the Mace to take him into Custody, according to former Order, together with the rest of the Counsel.

Sir *Thomas Meres*.] He finds that these men have committed a new offence. They have protections in their pockets against the Commons of *England*.

Sir *Thomas Littleton*.] The Counsel being in Custody, how to dispose of them now presently, is the Question. He sees the House has the same inclination of disposing them all alike. Would have the House informed, whether your Serjeant (*Topham*) has a house, and accommodation for them ; and would have him reap the profit, rather than send them to the *Tower*, having done his duty so well.

Sir *Lionel Jenkins*.] Defence is natural to all men, be the crime what it will ; and would have the Counsel heard, before any new sentence pass upon them.

Sir *Richard Temple*.] Unless you intend them a farther punishment, the last motion is not to be embraced.

If they are taken only in fresh suit, then you may bring them to the Bar, being a new cause; but not for the former offence, the sentence for it being commitment to the Serjeant—Offers this—You did not so solemnly pronounce sentence before upon them, though he could have wished it for the solemnity-sake; but now you have nothing to do, but to order the Serjeant to take them into custody.

Mr Sacheverell.] Though he has great respect for the Counsel, yet you can justify yourselves no way but by sending them to the Tower. For the Lords censure you highly, and prohibit the Lieutenant of the Tower, and all others, to detain them. Would have you give instructions to the Lieutenant of the Tower, and he believes he will keep them according to your Order.

Mr Powle.] Speaks now for ourselves—Should we do that to our own Members within doors, for breaking our Orders, and not do it to those without doors? Would be as just to these gentlemen as to ourselves.

Sir Thomas Meres.] This will remain to posterity, and since the Lords have taken occasion, in the Conference, to defy you in this point, therefore would do it—He doubts not but the Lieutenant of the Tower will keep them—He is sure he ought to do it.

Col. Strangways.] They have protection from the Lords, in contempt of your Order. He believes the Lieutenant will obey your Order before the Lords, and would have them sent to the Tower.

Sir Robert Howard.] 'Tis true, here's a condemnation of the thing, but sees not that Serjeant Pemberton has done it—*He was taken down to Order, for excusing Serjeant Pemberton, condemned by Order.*

Sir Robert Carr.] Pemberton was the guiltiest of all the four. You have passed your judgment upon him—'Twas then the opinion of the House, and submits to it now.

Sir Philip Warwick.] Such issues of blood have followed, upon occasions of this nature, that every body knows the history—Would take his eye from it—He thinks,

thinks, at this time, it would be much fairer for the Counsel to be in your Custody ; and he hopes the Lords will have more prudence than to rescue them—Moves, that, when we go to Conference, we let the Lords know what we have done, as just, and for the honour of the nation, and good of the Commons ; but, in all things, a soft word pacifies—Would keep them in Custody, and, upon this matter, would confer with the Lords.

Mr Hale.] Would avoid confusion, and putting the kingdom in a flame, by what we do. Has some reason for that, as other men have. To avoid confusion, would have them sent to the Tower ; and knows not what commotion may be, if sent any where but to the Tower.

Sir John Birkenhead.] Is against sending them to the Tower, because the Lieutenant has Orders expressly, from the Lords, not to receive them.

Col. Sandys.] Wonders he should inform you of a thing that is not so—There is no such Order.

The same said Sir Robert Carr.

Mr Secretary Coventry.] In all private families, in differences between man and wife, they desire to hide it from the inferior part of the family, that the disorder may not appear publickly. This difference betwixt the Lords and us may be very fatal—Knows not how God's judgments are upon us—You have vindicated your Privileges as high as ever ; you have these persons rescued from the Lords ; but should they rescue them again in the streets, you are not one step forwarder than you were before. Whilst we can with safety go on softly, why should we precipitate ? Would keep them in your own Custody, now you have them. You have many busy, discontented men, that attend your motions, and knows not how you can give a countenance to a greater commotion—“ I rise for the Lords,” says one. “ And I for the Commons,” says another—What Constable can tell whom to obey ?

Lord O'Brien.] As to the disorders from several factions, is sorry to hear that Coventry should know they are so formidable ; but, for the Constables, the laws of the

the kingdom will back our Orders; and does not doubt of it.

Sir Thomas Littleton.] Did apprehend, that the Motion for sending them to the *Tower* was waved; and, therefore, insisted not on it; but is now for sending them to the *Tower*—*Warwick* told you, “he had seen clashing about Jurisdiction, and an issue of blood was the consequence;” but that was clashing with the King’s power, this is with one another. This is contending about the King’s honour involved, and apprehends no fatal consequences by it. The hubbub apprehended will be less, by sending them to the *Tower*, than into the Custody of the Serjeant. Would not have them, in a triumphant manner, carried through the city, but by water—if they are carried to the Serjeant’s house, they must go through part of the city; and the Lords will break locks and bolts to rescue them—especially would send them to the *Tower*, having this advantage, that the Lieutenant is a Member of our own*.

Sir Edward Dering.] The Question is, Whether they shall be in the Custody of the Serjeant, or be sent to the *Tower*—If, in new cases, he moves a new thing, he hopes he shall be pardoned, as others have been—Moves to take their words for their appearance.

Sir Henry Capel.] You are told—not to send them to the *Tower*, because of the Lords Order. He thinks our Privilege, as well as Property, involved in this matter. If we have no satisfaction from the Lords, by this Conference, then shall be as forward as any man to send them to the *Tower*; but would wave it for the present.

Sir Thomas Meres.] Speaks only to the interception of them by the way—They may be as well intercepted, if at all, before they come within *Ludgate*; but thinks them very safe—The Commons of *England* have greater interest than the Lords. Let them go where they will, the Commons lands will be in *England*—He matters the thing of rescue no more than a foot-ball play. Apprehends no danger, let them go to the proper prison of

* Sir John Robinson.

this House; as you sent your Member, would send them; and thinks it as good an Answer as you can possibly give to the Lords at Conference.

Sir *Charles Wheeler.*] Apprehends not the force that can be done by the Black Rod and some footmen. Would have them go to the Serjeant's house in *St Paul's Church-yard*, and your honour is sufficiently vindicated by it.

They were ordered to be sent to the *Tower*, 152 to 147.

[The Thanks of the House were returned to the Speaker, for causing Mr Serjeant *Pemberton* to be seized, and taken into Custody. And the Serjeant was ordered to go, with his Mace, into *Westminster-Hall*, and to seize, and bring in Custody, the three other Lawyers, which he did accordingly.]

Sir *Thomas Meres.*] They may go, one by one, away; or you may let them down, as *St Paul* was, *in a basket*.

Sir *Nicholas Carew.*] Hears it was moved, in the Lords House, that the Counsel should have the King's guard, and that Lord was popishly affected. Would have them guarded to the *Tower*, but with the utmost privacy that may be.

Lord *Obrien.*] Many of the Lords barges are on the water, and knows not how safe they may be without guard.

The Speaker.] You must now express the special matter in your Order, Why they are committed to the *Tower*, viz. "for a breach of Privilege of this House, and contempt of an Order."—The fact must be expressly recited.

Mr *Hampden.*] Speaks to having the Warrant in the King's name—We have our authority, of right, and not of grace. If we use the King's name, the King may release them, if the Warrant be not in the usual style.

Sir *John Robinson.* [Lieutenant of the *Tower*.] He knows the Serjeant, particularly, to be a stout and honest man, and will answer for him.

Sir *Nicholas Carew.*] You must reckon from the time your first Serjeant took them, and so in some measure he (*Topham*) ought to have a recompence for his pains.

Mr

Mr Leveson Gower*, from a motion of something to be given to the Serjeant] said, he would have no money now given from this House, upon any occasion whatever.

Mr Hampden reports [from the Committee appointed to peruse the Lords Journal, and to see what proceedings there are, concerning the making the river] *Ouse*, in the county of *Bedford*, navigable. A Petition exhibited by the Earl of *Bolingbroke*, and others, and an Order of the Lords House, dated *May 28 last.*]

Mr Sacheverell.] This is a perfect original cause in the Lords House.

Sir Thomas Clarges.] By the Lords receiving the Petition, and the Orders they have made thereupon, it is clearly an original cause; and the consequence is, to take an authority before them, never yet taken, viz. to explain an Act of Parliament, which is not in the Lords power to do, and only belongs to the Judges. Would refer it to the Committee, to have more of the matter before them.

Sir Humphrey Wynch.] Several rivers were, by Act of Parliament, made navigable; as in *Surry*, &c. with this in *Bedfordshire*, which was written after the same copy; this was designed to agree with undertakers—Nothing was done in *Surry* or *Bedfordshire* by them. Sir John Napier was addressed unto by the county, about it, and it is to be heard at the Lords Bar this day. Now, whether you will take cognizance, whether the county of *Bedford* shall appear upon the Lords Summons [is the Question]—He knows not what other handle you can take it by—Being a construction of the law, and all the Commons of *England* concerned—He leaves it to you.

Sir Nicholas Carew.] The words in the Act of Parliament, “that the Justices of Peace of the county may do it, in case of failure of the undertakers,” he conceives not coercive upon them. If the Lords will make the word “may” to be “must,” they will, by it, alter all the law of *England*.

* Afterwards Sir William, Bart. great-grandfather to the present He was adopted heir to Sir Richard Earl Gower, as he was also, by the Leveson, Knight of the Bath, who female line, to the Earl of Egremont. left him his whole estate, and was He died in 1691.

Sir *John Duncombe.*] The Lords, by this, do not only make themselves judges of the law, but of the fitness of executing it—They bring gentlemen to dispute this at the Lords Bar, that ought to be in *Westminster-Hall*.

Sir *Robert Carr, and others.*] Moved for Conference upon it—This is an Appeal from some gentlemen to the Lords; not of the majority of the county, but some few gentlemen. If by Appeal out of the King's-Bench, either party might do it; but, from a few Justices, hopes, upon a Conference, it may be a justification to the gentlemen, that they do not appear—Desires not to be surprized in the matter, being of more moment than for those gentlemen, and your concern—Would consider of it.

Sir *Thomas Meres.*] At this rate, the Lords making themselves a House of Superintendency over the nation, the Militia Act, and all Acts, will be expounded by them. Would have the thing thought upon, a few days before, by Conference, we engage in the matter. Would rather, by a Message, prevent this afternoon's proceeding—Moves it, but proffers it only.

The Warrant for Commitment of the Lawyers was read—“For prosecuting a suit, in the Lords House, against Mr *Dal-mahoy*, a Member of this House—whom you are to detain during the pleasure of this House.”—The Warrant was thus altered: “For breach of Privilege, and contempt of the authority of this House.”—Directed to Sir *John Robinson*, Lieutenant of the Tower. By a mistake, the Clerk wrote the date of the Warrant—“Given in the 22d year of our reign.”

The Speaker.] Is informed, as much as he can be of such a thing without doors, that the Lords have ordered to take our Serjeant into Custody—He should be loth that the Serjeant should be taken out of his coach, and go home without a Mace.

Mr *Stockdale.*] We will wait upon the Speaker to *Temple-Bar*, and meet him there again to-morrow morning.

Sir *Thomas Meres.*] Sees we are at some stand and amazement. If the thing be true, 'tis a matter of that nature that has not been done before.

Sir

Sir Robert Carr, and others.] Moved to have the Lords Journal inspected; this being but a report without doors.

Mr Sacheverell.] The foul minute-books are only yet written, and the Journal not till night, and then the Lords Clerk signs it.

The Speaker.] Informs the House, that Mr Palmes has a note sent him by a person, whose hand he knows, that the Lords have made an Order to seize our Serjeant and his Mace, by the Black Rod.

Sir Thomas Meres.] Moves that Mr Palmes may go to the person that sent him the note, to know how this person comes to be informed of this Vote.

Ordered, That the Lords Journal be inspected about it.

The doors were ordered to be locked, and no Member to go out, without leave. Several who were indisposed had leave to go out. The Secretaries of State, Sir Joseph Williamson, and Mr Henry Coventry, desired leave to go out, being a Council-day—Were not given leave without a Debate.

Sir Winston Churchill.] Moves, that if the Mace be a badge of your authority, and that taken away, how you can be supplied, or have the effects of it—As Counsellors are sworn to the King, moves they may have liberty to attend his Majesty, that we may not be mis-interpreted, as being kept prisoners here.

Mr Vaughan.] When an authority judges you, 'tis not as if a private man did it.

Mr Sacheverell.] Is against the Motion of a Message to the Lords; it is to your dishonour. What will you go upon? Because the Lords have made such an Order, you go, and complain to them. When the thing is once done, you know what you have to do.

Lord Obrien.] The King is not yet concerned in the matter, and would by no means engage him in it.

Sir Nicholas Carew.] Finds we are in a streight. If this Order be true, he believes it a bugbear only. There are persons employed above for the Conference; would adjourn for two hours, to try whether the thing be so, or no, and whether your Mace will be taken from you.

Sir

Sir *Thomas Clarges.*] Would sit still, 'till the Counsel be safe in the *Tower*; and, if our Serjeant be violated, we may consider of it.

Mr Secretary *Coventry.*] Lord Ambassador *Lockhart* is lately dead in *France*, and his presence is very requisite to attend the Council, about that and other affairs, the King having appointed the Council to be held at five o'clock this afternoon.

Sir *Robert Carr.*] Mr *Palmes* and himself were with Mr *Brown*, the Lords Clerk, who told them that the minute-book being not yet read and inspected in the Lords House, it could not be showed; but being asked by them, about the Lords Order for seizing our Serjeant, said, "such an Order was made by the Lords; but thinks the Mace safe, they having taken care to provide another Serjeant."

Sir *John Dunccombe.*] The Lords do sit, and 'tis very fit you should sit too, and not leave things wild as they are, and let the Government be torn in pieces by these unfortunate differences—He hopes something may be found out to accommodate this difference.

Sir *Thomas Meres.*] We are now a full House, and a business of this nature requires it; and fears we shall not be so again, if we adjourn; and, unless there be a great reason for an excuse, such as absent themselves ought to be punished. Would have a sitting House, whilst these Lawyers are going to the *Tower*; having somewhat of moment to move to you.

Sir *Charles Wheeler.*] Would hear the Report from the Committee, who have prepared your Reasons for the Conference, and send the Counsel away; and you may adjourn for two hours.

Sir *Nicholas Carew.*] If you adjourn, would have a full House when we meet again; and, in order to that, will take notice of his right and left hand man.

The Speaker.] The deputies may go with the prisoners to the *Tower*, and the Serjeant stay with him; which will prevent the Lords from taking the Serjeant, for the present.

In the Afternoon.

Sir Nicholas Carew, Upon a motion for reading the Bill, for the better collecting of small Tythes, and other Church Duties, said, He would secure the nine parts, before we meddle with the tenth. Would have the Bill of Coal read, seeing we are so hot, to add fuel to the fire.

Mr Garraway.] He was not here in the morning, and would have an account of what the Serjeant has done with the gentlemen of the Long Robe, whom you sent to the Tower.—*It was seconded.*

The Serjeant (*Topham*) gave the House an account, that Sir *John Robinson* has received the prisoners, and he has a note under his hand for the receipt of them.

Mr Garraway.] Now that your Order is executed, would think how your servant, the Serjeant, may be justified, that he may not be taken from us. Would have your Serjeant armed with your authority, that, if any one should take him in Custody, he may have power to bring him before you.

Mr Sawyer.] If you please to grant him your Order of Privilege, with this extraordinary Clause, “That all persons should be aiding and assisting to him,” thinks it will be authority sufficient.

Sir Nicholas Carew.] Would have his Order in his mouth, that he is Serjeant of the House of Commons.

Mr Powle.] Thinks you lessen your authority by this motion. Would not suppose any man dares do it—But he asked pardon, having not been long here in the morning (being employed about the Reasons for the Conference) when notice was given that the Lords had made an Order for taking our Serjeant.

Sir Thomas Clarges.] Would not have the Order run, “If any person, or persons, seize your Serjeant;” ‘tis too general. Would have it, “By Order from the Lords.” There is no Privilege can be against Treason, &c. The Lords cannot grant any such Warrant, though a Justicee

a Justice of Peace may—Therefore would have that added.

Sir *Nicholas Carew.*] If a Member be attached for Felony, &c. you will, he believes, examine the Warrant, before you yield your Member; else, upon pretences, your Members may be taken from you.

The words of the Serjeant's protection were proffered to be—“arresting, detaining, molesting, or otherwise charging.”

Mr *Sawyer.*] Would keep to the legal words, that it may go in a legal way.

Sir *John Hanmer.*] Would have it run—“against the Privilege of this House.”

Mr *Sacheverell.*] Not that, for by it you make your Serjeant judge of the Privilege of this House.

The Answer to the Lords last Conference was reported by Sir *Thomas Lee*; and, with some few alterations, passed as follows:

“Your Lordships having desired the last Conference, “upon matters of high importance, concerning the dignity of the King, and the safety of the Government,” the Commons did not expect to hear from your Lordships, at that Conference, things so contrary to, and inconsistent with, the matter upon which the said Conference was desired, as were then delivered by your Lordships.”

“It was much below the expectation of the Commons, that, after a representation in your Lordships Message, of matters of so high importance, the particular upon which the Conference was grounded, should be only the Commitment of four Lawyers to the Custody of their own Serjeant at Arms, for a manifest violation of the Privilege of their House.”

“But the Commons were much more surprized, when your Lordships had introduced the Conference, with an assurance that it was in order to a good correspondence between the two Houses, that your Lordships should [immediately] assume a Power to judge the Order of the House of Commons, for the imprisonment of Mr Serjeant *Pemberton*, Mr Serjeant *Peck*, Sir *John Churchill*, and Mr *Charles Porter*, to be “illegal and arbitrary, and the execution thereof a great indignity to the King's Majesty;” with many other high reflections upon the House of Commons, throughout the whole Conference; whereby your Lordships have condemned the whole House of Commons, as criminal; which is without precedent, or example, or any ground of reason so to do.”

"It is not "against the King's dignity" for the House of Commons to punish, by imprisonment, a Commoner, that is guilty of violating their Privileges; that being according to the known laws and custom of Parliament, and the right of their Privileges, declared by the King's royal predecessors, in former Parliaments, and by himself in this."

"But your Lordships claiming to be the "Supreme Court," and that "his Majesty is highest in his royal estate, in the Court of Judicature there," is a diminution of the dignity of the King, who "is highest in his royal estate, in full Parliament," and is derogatory to the authority of the whole Parliament, by appropriating it to yourselves."

"The Commons did not infringe any Privileges of the House of Peers, but only defend and maintain their own. On the other side, your Lordships do highly intrench upon the [rights and] Privileges of the House of Commons, denying them to be a Court, or to have [any] authority, or power, of Judicature; which, if admitted, will leave them without any authority or power to preserve themselves."

"As to what your Lordships call "a transcendent invasion of the rights and liberties of the subject, and against *Magna Charta*, the Petition of Right, and many other laws," the House of Commons presume, that your Lordships know, that neither the Great Charter, the Petition of Right, nor any other laws, do take away the law and custom of Parliament, or of either House of Parliament; or else your Lordships have much forgotten the Great Charter, and those other laws, in the several judgments your Lordships have passed upon the King's subjects, in cases of Privilege."

"But the Commons cannot find, by *Magna Charta*, or by any other law, or ancient custom of Parliament, that your Lordships have any Jurisdiction, in cases of Appeal from Courts of Equity."

"We are farther commanded to acquaint you, that the enlargement of the said persons, imprisoned by Order of the House of Commons, by the Gentleman-Usher of the Black Rod, and the Prohibition, with threats to all officers, and other persons whatsoever, not to receive, or detain them, is an apparent breach of the Rights and Privileges of the House of Commons; and they have therefore caused them to be retaken into the Custody of the Serjeant at Arms, and have committed them to the Tower."

"As to the Parliament-Roll of 1 H. IV. caused to be read by your Lordships, at the last Conference, but not applied, the Commons apprehend, that it doth not concern the case in question; for that this Record was made upon occasion of Judgments given by the Lords, to depose and imprison their lawful King,

King, to which the Commons were unwilling to be made parties ; and therefore the Commons conceive it will not be for the honour of your Lordships to make farther use of that Record."

" But we are commanded to read to your Lordships the Parliament-Roll of 4 E. III. N^o 6 ; which if your Lordships please to consider, they doubt not but your Lordships will find occasion to apply it to the present purpose." 5

Rotul. Parliament. 4 Ed. III. N^o 6.

Concordia ne trahetur in exemplarium. " And it is assented, and agreed by our Lord the King, and all the great Men, in full Parliament, that although the said Peers and Judges took upon them, in the presence of our Lord the King, to make and to give the said Judgments, by assent of the King, upon some of those which were not at all their Peers ; and this, by reason of the murder of their Liege Lord, and destruction of him, which was so near of the blood royal, and son of a King ; that, therefore, the said Peers, which now are, or the Peers which shall be in time to come, be not at all bound, nor charged to give Judgments upon others, than upon their own Peers ; nor to do this have the Peers of the land any power, but of this for ever to be discharged and acquitted ; and that the aforesaid Judgments, so given, be not drawn into example, nor into consequence, in time to come ; by which the said Peers may be charged hereafter to judge others than their own Peers, against the law of the land, if the like case should happen, which God forbid *."

Mr Powle.] The occasion of this Record was this : Edward II. being deposed by Roger Mortimer, Earl of March, was murdered at Berkeley-Castle, by the contrivance of Mortimer. The Earl of Kent, his own uncle, for endeavouring to release him, was impeached in Parliament, with others, &c. But the Judgment given against them in Parliament was revoked, as erroneous. And his son cited them, and they were adjudged to death, by Parliament ; and so this Law came to be made. And the Record is marked in the margin, *Ne trahetur in exemplarium* — Assented by the King in full Parliament. — Not to render Judgment but upon their Peers, against the law of the land."

* This Roll is not entered in the Journal.

Ordered, That Sir *Henry Capel* be sent to desire a Conference with the Lords, on the subject-matter of the last Conference.

Saturday, June 5.

Mr Secretary *Coventry* brought a Message from the King, to attend him in the Banqueting-House, and to adjourn the House till four o'clock in the afternoon [for that purpose.]

Sir *Eliab Harvey.*] Would, according to the King's command, adjourn the House; but would address the King to have our Serjeant restored, who has serv'd us so well *.

Mr Secretary *Coventry.*] The King has been informed of certain words that fell from the Serjeant, whether misrepresented to the King, or no, he knows not; but the King has suspended his attendance, till he be better informed. It is for things said before the difference between the Lords and us, and before he was in our employment.

Mr *Garroway.*] Is glad that the Serjeant is not taken away as a part of us, for doing his duty. We ought therefore to address the King most especially, that the man be not ruined.

Mr Secretary *Coventry.*] He dares pawn his head upon it, that the King did not remove him upon the Address of the Lords.

Mr Secretary *Williamson.*] The King was informed of some words that fell from the Serjeant, and assures you that his removal was not from the Lords Address.—He is but a servant of the King's, from day to day, as he is employed.

Colonel *Strangways.*] Would have the Debate adjourned till we meet again.

Sir *Thomas Lee.*] 'Tis well moved to adjourn—Your sense is as well known by adjourning, as by a Question. Would adjourn the Debate till four o'clock in the afternoon.

[The Debate concerning the Serjeant was adjourned till 5.]

* *Topham*, who had been removed.

In the afternoon both Houses attended the King in the Banqueting-House, where he spoke as follows: [Reported by the Speaker.]

“ *My Lords and Gentlemen,*

“ You may remember, that, at the meeting of this Session, I told you, no endeavours would be wanting to make the continuance of this Parliament unpracticable. I am sorry that experience has so quickly showed you the truth of what I then said: But I hope you are all convinced, that the intent of all this, in the ‘‘ contrivers,’’ is to procure a dissolution. I confess, I look upon it, as a most malicious design of those who are enemies to me, and the Church of *England*; and, were the contrivers * known, should not doubt, but the dislike of their practices would alone be a means of bringing the Houses to a good understanding. But, since I cannot prescribe any way how to arrive at the discovery of it, I must tell you plainly my opinion, that the means of coming to any composure betwixt yourselves, cannot be without admitting of such full Conferences, as either may convince one another by the Reasons then offered, or enable me to judge rightly of the differences, when all has been said on both sides, which the matter will afford: For I am not to suffer these differences to grow to disorders in the whole kingdom, if I can prevent it; and, I am sure, my judgment shall always be impartial between my two Houses of Parliament.”

“ But I must let you know, that whilst you are in Debate about your Privileges, I will not suffer my own to be invaded.”

“ I have nothing more to say at this time, but to desire, as I did when we met first, that you would yet consider, and not suffer ill mens designs to hinder this Session from a happy conclusion.”

[*Debate.*]

Sir *Thomas Littleton.*] If any man has done contrary to his duty in this House, would have him named. He knows nothing of what persons without doors have done.

Colonel *Sandys.*] Prays that thanks may be returned to the King, “ for his care of the kingdom in general.”

* Burnet affirms, Vol. I. p. 385. That Lord *Shaftesbury* acknowledged himself to be the “ contriver,” but that others assured him, the thing happened of course.” Marvell acknowledging, very candidly, the Lords supremacy, in

point of judicature, gives it as his opinion, “ That the Commons did not embark in earnest in that affair, but that some crafty Members blew the coals, to prevent the Test’s coming amongst them.”

And, if any persons be guilty, would have a Committee to enquire, and report, if any persons have informed the King, &c.

Mr Garroway.] Notwithstanding all the fair Addresses that we have made to the Lords, they give us such language, as is not to be supported, amongst private persons. He never can give way for a Committee to search into the authors of this contrivance, that his Majesty mentions in his speech, (as is moved) Will you go rake for matter abroad, when Members pursue their duty here as they ought to do? The King has given us liberty of speech, and this matter of difference betwixt the Lords and us was put upon us. Would have a Question put, "That what your Members have done in this matter is in pursuance of their trust."

Colonel Sandys.] Intended no charge upon your Members, by what he said, but, if common fame be true, which asperses this House, we ought to vindicate ourselves.

Sir William Portman.] Moves that we may return thanks to his Majesty for his gracious Speech.

Sir Thomas Lee.] Common fame, that asperses this House, has not yet reached him; but if such a thing be, *Sandys* ought to tell you who such persons are that report it.

The King's Speech was read a second time.

Mr Secretary Coventry.] If the King knew who were the persons that endeavour this, he would tell you. If nothing came from abroad, nothing could come within —The King says not the thing here nor there, nor anywhere, nor that any of you know it.—Believes it far from the King.

Sir Henry Ford.] After so gracious a Speech, no Motion is so natural as "unanimous thanks," and, before the consideration of any thing, moves the Question for thanks.

Mr Vaughan.] We must take care not only for ourselves, but for without doors. If any man abroad brought

brought the Appeal into the Lords House, by persuasion, or ill intent, let him be named. He owns so far the contrivance, as that he opened the matter here. Never was House of Commons more loyal than this. If common fame accuse at all, it will accuse us for giving so much money. The King's Speech is kind, but you ought to purge yourselves.

Sir George Downing.] Where were we, if we wanted a King, and were only Lords and Commons? This is the happiest day he ever saw. He is for the Lords as a good and wholesome part of the government—The King must keep us together, or we are miserable. God has inspired the King in what he has now done, and let us give God and the King thanks.

Mr Sawyer.] If the King had accused the House, or any Member of it, then it would have been time for such a Vote as is moved for. But the King's expression has quite another strain. Has not the King given judgment for you, where the root of all this difference has been, "denying of Conference," which you sent to the Lords for?—But he believes malicious men are strong—that such an unparliamentary matter should be delivered by the Lords, at a Conference, cannot be but by some ill instruments. 'Tis fit for you to enquire into it, as a Grand Jury.—Has not the dissolution of this Parliament been talked of without doors? They have practised and endeavoured it. Would put the Vote for thanks.

Sir Thomas Meres.] Prorogations have been pretty well practised, but dissolution not yet. Let us sweep this contrivance out of our own House. If it be in the Lords House, let it be there. 'Tis not certain who the contrivers of this were. All he can say is, he is sure there are none in this House. 'Tis a good Question, in order to your right, to clear yourselves. Is sure, if the King dissolves us, he knows not where to get a better Parliament.

Sir Robert Carr.] Agrees not with the Motion. Would
S 4 have

have thanks, first put to the Question, and then the other, for clearing ourselves.

Mr Powle.] Is not unwilling to speak in this matter, because no man can impute this difference to him, though he has been employed in the service of the House about it. Believes, not only that there is a design of the dissolution of this Parliament, but of all Parliaments—Doubts not those whose boundless ambition makes them hate Parliaments, this, or any other; and these men would make wounds. First, they put the King upon harsh things to his subjects.—When Addresses are made to him of grievances, they tell him, “ We intrench upon his Prerogative.”—The first blow is to dissolve the House, and then they can more easily persuade him to call no more, by telling him, “ There will be tumultuous elections, and men of ill principles chosen.” These men are afraid to look Parliaments in the face. Some such men as these insist upon general things, as men that carry on popular designs in Parliament. In *i K. James*, something of this was done. In his Speech, there was a smaller imputation upon the House, than the King made to-day. In his Speech, they then passed a Vote to clear all their Members, and drew up an apology, and sent it to the King, to justify their proceedings. He cannot imagine but that such contrivers, as the King mentions, must be some of this House. Would have thanks voted to the King, “ for his gracious expressions in his Speech,” but would not rest there—And then humbly beg of the King, “ to declare what he has been informed of this House.” ’Tis necessary and just to pass a Vote to clear all the Members of this House.

Sir John Duncombe.] This Parliament needs no vindication of their proceedings. What necessity is there of vindicating yourselves? Such reports as these will be, whilst the world stands. You have been a happy Parliament, and hopes you will continue so.

Sir William Coventry.] The House will bear him witness, and yourself, Mr Speaker, that he has, in this matter, been of the coolest side. He concurs with what

is told you, that our loyalty is well known, and needs no vindication. If particular Members must lie under a suspicion, and we are slack and remiss in vindicating questions, will it not lie upon their hearts? What shall gentlemen say? That, out of apprehensions, you will not vindicate your Members? It will make men mealy-mouthed, for the future, and take away liberty of speech in Parliament. Would have that respect put upon the King, only to read his Speech, and then adjourn the House, seriously to think of thanks.—He is glad to have an opportunity to speak what he has done—And moves for thanks to the King, for his gracious Speech to us.

Colonel *Strangways.*] We ought to thank God and the King, for being on our side, in moving both Houses to Conferences. The Lords and we have been hitherto like Ambassadors, giving memorials to one another. Whoever goes about to dissolve this Parliament, goes about to ruin both Church and State—He never thought to see such a day—When the King has proposed so wise a way, he hopes no man backward to give him thanks, and then he will be as much as any man, for punishing all men without doors.

Lord *Cavendish.*] He heartily concurs for thanks to the King, but there's one clause in his Speech he understands not. Would understand what he thanks for—An expression being somewhat dark in it.

Mr *Sacheverell.*] Has been zealous in this business with the Lords, and therefore he is not unfit to speak. Would have the Question put, as is offered, “for the gracious expressions in the King's Speech.” Is for thanks, if not generally expressed.

Sir *Thomas Meres.*] Your Question, first insisted on, was, “The gracious expressions in his Majesty's Speech.” 'Tis a strange thing, that when a thing is unanimously agreed on, you, Mr Speaker, will put it otherwise.

Colonel *Titus.*] What would gentlemen give thanks for, if not for the gracious expressions in his Majesty's Speech?

Resolved,

Resolved, nem. con. That the humble thanks of this House be returned to his Majesty, for the gracious expressions in his Speech *, this day made to both Houses of Parliament: And that the Members of the Privy-Council deliver the thanks.

Sir Richard Temple.] Before you rise, would consider of the vindication of the House, that the Votes may go both together. He cannot tell any thing that the House has showed more temper in than in this matter with the Lords. The Lords send you an answer, with an equivocation, “They will be as careful of your Privileges as of their own.” In all the steps we have made, he insists that they have been with the greatest temper that can be. If any man has been so bold as to misrepresent these things to the King, he would know him. On this ground would go constantly. Would have some declaration, to vindicate yourselves in these cases, that we have declared our duty and loyalty to the King.

Sir Winston Churchill.] When smoke rises, supposes fire, and you usually search for it—Would fling water upon this fire, and know where it is. He believes that the King means no-body within these walls; and though he is present with the Lords often, and knows what is said and done, yet he hopes the fault is not there. He believes the men to be they that do not own the King’s supremacy. Would give the King an account, not only of our innocence, but “that with our lives and fortunes we will defend him.”

Mr Sacheverell.] Proposes some words towards a Question, viz. “That in matters of difference between the Lords and us, no Member hath done any thing against his duty, or trust reposed in him.”

Mr Secretary Coventry.] Is far from opposing your Members vindicating themselves; but by a friend was told, and by several of the other House, that the Speaker, Sir

* When Thanks were moved for in the House of Lords, for the King’s first Speech, at the opening of the Session, the opposing Lords were for limiting the Vote to these very words; and, being defeated,

entered their Protest, with this Remark, “That they thought this manner of proceeding not so suitable to the liberty of Debate necessary to this House.”

Robert Carr, and himself, were the three heaters of the House, and the greatest incendiaries. He can encourage no-body in his vindication, but would be glad of it.

Sir Thomas Lee.] Believes that *Coventry* alone has not, but most have been zealous in this matter; therefore would have the Question for all.

Sir Robert Carr.] Is so much for the Commons of *England*, that though he reported it not of himself, he is glad that others did.

Sir William Coventry.] 'Twill be good service to tell the King, that the contrivers of such disturbances are not here, so they may be sought for elsewhere. Offers this for the Question, "that it does not appear, by any proceedings here, that any Member has been guilty of the contrivance of any disturbance."

Sir Henry Ford.] Was told by a noble Lord, "That he was one that accompanied the Serjeant into *Westminster-Hall*, to take the Lawyers." Is sorry to hear himself named, in the Lords House, on an ill occasion—When the Serjeant, in a riotous manner, seized the Counsel, at the Chancery Bar, he protests he saw not the Serjeant, nor the Counsel.

Sir Robert Carr.] Thinks that a particular Question should be put for this Member, and left out of the General Question.

Sir Thomas Meres.] Thinks that *Ford's* excuse lessens his honour in the busines.

Col. Stroude.] Moves that every man stand up, and avow the vote.

Sir William Coventry.] An extraordinary practice, for an ordinary case, is not usual—The shorter way would be, for any man that thinks himself guilty, to stand up, and say so.

Mr Secretary Coventry.] To say, "that no man has contrived any thing," is not to be done. Suppose that such a thing should hereafter appear to have been.

Mr Swynfin.] Conceives the Question narrow enough already. Would have the words affitory as set down. We cannot be guilty of any contrivance of any thing what-

whatsoever. The midwifry of any such contrivance is by naming it, and you are the nurses of it, by debating it—Such a contrivance, by moving any thing, makes the whole House of Commons liable to a restraint, not to consult with their Fellow-Members, to propose any thing—Thinks the liberty of the House gone—Would read the Question full as it is, assertory, without any diminution at all.

Mr Vaughan.] In voting this, as 'tis propounded, you do that which all the world knows you do, and need no more proof, by vote, than that the sun shines.

Sir Thomas Littleton.] Adding the word “appear,” is putting in a blemish, and a suspicion, as if it may appear otherwise.

Col. Titus.] Would have no man aver what we cannot aver, in this House. You cannot affirm, that he had no contrivance in this difference. He himself only does.

Sir Lionel Jenkins.] The Oath of Compurgation is not, “that the person did not do such a fact.” The Compurgators swear *ad creditibilitatem* only; “they believe him not guilty.”

Sir Thomas Lee.] Every Act of *Jenkins's* Court is positive.

Mr Secretary Coventry.] If you put the word “Judgment” into the Question, it will imply, that we are examining one another. We have found fault with the Lords for this word “Judgment.” He cannot judge a thing that he does not examine, and cannot agree to the word in the Question.

Mr Powle.] The word “Judgment” does not reasonably imply what *Coventry* says—it is “upon all the circumstances he hears in this House;” and if you take it so, you may pass it.

Resolved, [171 to 104] That it doth not appear to this House, that any Member thereof hath either “contrived” or promoted the difference between the two Houses of Parliament, or in asserting the Rights of the Commons of *England*, and the Privilege of this House, to have done any thing inconsistent with his duty, or the trust reposed in him.

Monday,

Monday, June 7. †

The Bill was read for abolishing the Writ *de hæretico com-burendo.*

Resolved, That Serjeant *Topham* hath done nothing contrary to his duty, in [retaking, bringing in Custody, and] conveying the Counsel to the *Tower*, by Order of this House.

Sir *Thomas Lee.*] This is no more than keeping a claim to the Serjeant. In what condition, for his safety, and your honour, do you leave him, in case he should be apprehended, and should not appear owned to be your Officer?

Sir *William Coventry.*] By putting the Question in general, it may be taken up under what notion whatsoever.

Mr *Garraway.*] This little Debate has kept a claim, and you may adjourn it as often as you will.

Sir *Thomas Clarges.*] *Topham* having done very acceptable service to this House, you found, next day, a stranger in his place. That's the subject of Debate.

Resolved, That the Debate concerning Serjeant *Topham*'s removal be adjourned to *Wednesday*.

Mr *Garraway.*] Moves to have your protection for Sir *John Fagg* (as you have given Sir *John Napier*) who is summoned, by Order from the Lords, to appear at their Bar the 8th of *June*, or sentence will pass upon him, upon default.

Sir *John Fagg.*] You may remember where he lately was [the *Tower*] The noise of the lions is scarce out of his ears. He humbly submits to what you please to do with him; whether you will give him leave to submit to the Lords Order, and waive his Privilege, or that you will be pleased to give him your Protection.

† 'Twas said, that the Earl of *Anglesea*, in his speech in the Lords House, should say, "He could not tell what to call the House of Commons, Whether the *Lviathan*, the *Leocuts of Egypt*, or the Monsters in the *Revelation.*"

Sir

Sir Thomas Lee.] Every Order of this kind strangely lessens you; and by this time you have sufficiently declared your opinion. Would have no Order made, but some declaration of your own rights in this case.

The Speaker.] You have made an Order, "that no man shall attend any summons to the Lords House, without your leave." The Question is, Whether you will give *Fagg* leave.

Sir Thomas Meres.] The case is an Appeal from a Court of Equity; and you have voted, "that the Lords have no Jurisdiction in such Appeals." If you give *Fagg* leave to appear, you retract your Vote.

Sir Charles Wheeler.] Would not deny *Fagg* leave to appear, for that lessens you. Would have nothing voted in the case.

Sir Thomas Lee.] *Fagg* ought to have your protection, and, in it, would have you declare your opinion.

Sir Thomas Meres.] They that are gone to the *Tower* will say, you have not posted up your Order, before they were sent to the *Tower*; and, since, it has been posted all over *England* sufficiently.

Sir John Fagg.] Twenty more, besides himself, are concerned—'Tis an Appeal from the Exchequer and Chancery. Would preserve your Privileges, but hopes you will take care of his cause a little.

Sir Thomas Clarges.] This Appeal is an original cause; and if you do any thing, set up an Order, posted upon the House-door, for all to take notice of it.

Mr Vaughan.] You ought to make some declaratory Vote, or give *Fagg* liberty to appear.

Mr Garroway.] Should *Fagg* lose one thousand pounds *per annum* by this, he is ruined by obeying you. Would have it laid to heart, and you are to give him the protection of the House.

The Speaker.] You must first see that *Fagg* has a prejudice, and then consider of it.

Sir Thomas Lee.] 'Tis a hardship that a gentleman must be first undone, and that then you will consider to protect him.

[*Mr Hampden.*] Common charity obliges us to do something in this. Suppose the Lords pass Judgment, will it not be executed when you are up? And you give Fagg a Vote, which ceases with you. 'Tis a little thing he asks of you, a Vote to assist and protect him, in order to do something else afterwards—A Vote will do little—And then, some farther effectual remedy to take effect, when you rise, and are gone.

[*Sir William Coventry.*] 'Tis unreasonable that Fagg should be subjected, by this Order of the Lords, to lose one thousand pounds *per ann.* But he knows not what you can do. Consider what way in the world you can help him, unless a Vote "of assisting him with your lives and fortunes," (*reflecting upon Sir Edmund Jennings, who moved, in the Debate upon removing the English Forces out of France*) "To assist the King, in case of war, with our lives and fortunes." Unless you deter the Counsel from proceeding, he knows no other way.

[*Sir William Hickman.*] Will you put a gentleman upon this, and do nothing for him? Would do something in prohibiting the proceedings.

[*Sir Richard Temple.*] One way is, to declare something against the persons that shall proceed in the cause at the Lords Bar. He could wish you had a general Order, "that all Counsellors, in such Appeals, and all executors of such Orders of the Lords, upon such Appeals, are betrayers of the liberty of the subjects;" since the thing has been started, would do something. You have also a remedy to address the King, as a grievance, to take such judgments from the file.

[*Mr Powle.*] Would have it considered, what power the Lords have to put these Orders in execution. The Chancery has no legal way of Commitment, but for disobeying their Orders. He believes the Lords will not take upon them to commit Members of this House, unless they take upon them their "Supreme Justice," that they mentioned at the Conference. In any Vote about the forbidding the Counsel to appear, he will join with you.

Mr Attorney Montagu.] If the Lords had proceeded against *Fagg pro inconfesso*, the proceeding must have been long; but now *Fagg* has appeared, they may proceed presently.

Col. Birch.] Would have three or four gentlemen withdraw, and pen something for the purpose.

Sir Charles Wheeler.] When the nation shall understand that this is not only in the case of *Fagg's Privilege*, but of the whole Commons—

Sir Thomas Lee.] Would have gentlemen remember, that, in a prorogation for half a year, there was no execution of the Lords Judgment *, for fear of your sitting again. In the first Vote would encourage—to stand by *Fagg*.

Sir Henry Ford.] You had as good reckon the Lords infallible, as go about, by a Bill, to remedy this. He knows not what you can do more than you have done. If you gain the point, all the Lords have done, is *coram non judice*; if not, you must leave *Fagg* to his own resolution.

Sir John Ernly.] *Fagg* has submitted his cause to a hearing at the Lords Bar; now, for preserving the best understanding that can be, would send up to the Lords a Message, “That, though *Fagg* has appeared, yet you cannot lay down the Privilege of this House.” And *Fagg* may lay it open at the Lords Bar, that he cannot get leave to proceed any farther in the business.

Sir Edward Baynton.] Conceives it no objection of power in the House to do any thing farther, or what we have done already. But *Fagg* having waved his Privilege once, should he stand upon it now, it would look like a faint prosecution, to let fall his cause. The Lords ordered the cause for to-morrow, before we were at the Banqueting-House to attend the King. What if *Fagg* be allowed, in case the cause comes on, to plead his Privilege, and that he has no mind to go to the Tower again?—He might lie somewhere else much cheaper.

* *Skinner's case.*

Mr Streete.] Fagg's cause has come to issue at the Lords Bar, and he cannot plead his Privilege now.

Mr Sacheverell.] Wonders at the Motion—He forgets the Order of the House, and now moves you for Fagg to put in his Plea of Privilege.

Mr Sawyer.] Touching Appeals to the Lords, without limitation of the case of your Member, the King has given his judgment, “that Conferences might be, and ought to be, a way to a better understanding.” You, by passing this Judgment, will give occasion to the Lords to say, “it is a final reason against all Conference, you having judged it.” Would have you go in the wisest, and easiest steps. Fagg has put in his Plea, and joined Issue. All the Lords can do is to dismiss it below, and then some years will be before the accounts will be adjusted. Finds that the Lords, in one Vote, have concurred with us; we having acquitted our Members of contrivance in this business, and they theirs.

Mr Garroway.] If we do not declare something in it, we give up all; and if we go to Conference, we shall have no ground for it. Put the first Question about Fagg's protection.

1st Question, proposed : Sir John Fagg shall have the protection of this House, in an Appeal brought against him at the Lords Bar.

2d Question. Any person, or persons, aiding or assisting to any Appeals brought against any of the Commons of England, from any Courts of Equity, shall be judged a betrayer of the Liberties of the Subject.

Sir John Duncombe.] Possibly we may have a Conference again—Whatever you speak here, you are judges of; but, at a Conference, all the world judges of your Reasons; and such a Vote makes the difference impossible ever to be reconciled again.

Sir Winston Churchill.] Takes a Vote to be the opinion of the House on the subject-matter debated, being but inductive of a Conference; and you have no reason yet to be of another mind, till the Lords can convince you.

Mr Secretary Coventry.] Cannot see how you can make this Vote look forward, but it must look backward. The Lords have heard and determined Appeals formerly; but, whether right or wrong, he knows not. He is for vindicating your Member, but think whether the Lords have not then this advantage over you, that 'tis the first time you have interrupted it.

Sir Charles Wheeler.] Could have wished that this difficulty had been started, "that the Lords have no Jurisdiction in Appeals from Courts of Equity," before the Vote than now.

Mr Garraway.] 'Tis unnecessary to put in the last words, "Against Privilege of Parliament." If you are afraid to assert this, how will you ever come by it? If it comes to a Law, he hopes that a Proviso will be with a retrospect for what is past, that men may have no prejudice by it.

Sir Rob. Howard.] You have passed a Vote already for your Member, and we should now do it for the Public. Privilege of Members here arises from public trust. If it be not so, why do we desire it of the King? Would have this Vote turned thus—"Assist against a Member in an Appeal." If the Lords can, [let them] tell you why a private cause should draw you from a public duty—But generally you will find a world of precedents against you. When we launch out into these general expressions, we have destroyed their arguments, by making them too general—Would not have us do so too.

Sir William Coventry.] The words of the Question are too strong for the present occasion. Would not have it "Betrayers of the Liberty of the Commons of *England*," though the Lords chose to tell you so, and no occasion given for it, and have forbidden the keepers of prisons to receive the Counsel.

Col. Titus.] He who spoke last has convinced me.

Sir Thomas Lee.] Whilst the Lords are possessed of this with a strong hand, they will not confer with you; but this Vote will put the Lords upon speedy Conference, to justify their right.

Sir

Sir *Robert Carr.*] Would not part with his Privilege for all the estate he has; though he believes the Lords will deny us Conference, because they have no reasons to show us against it. But till you have tried this way of Conference first, would not pass the Vote.

Mr Secretary *Williamson.*] You have judged the matter already in the general Vote. The special occasion calls it in aid to Sir *John Fagg*; but the whole matter must be melted down at a Conference.

Sir *Thomas Meres.*] Such a Vote as this passed not in *Skinner's* case, till a Conference was had; so that you were got to a brick wall; you could go no farther. Upon that Vote of the Lords Jurisdiction in Appeals, you have not so much as asked Conference. In *Fagg's* case, you have been denied Conference twice—And to that only you may apply it.

Sir *John Duncombe.*] Fears, that you will make the thing wider, and, by consequence, more desperate. By force of reason, possibly, you may be convinced at a Conference, and so ease your Vote. Therefore would apply the Vote to *Fagg*, or any other Member, only.

Sir *Thomas Littleton.*] In *Fagg's* case, they denied you Conference, and so the Vote is proper. But in such a mixed subject as this, partly Judicature, and partly Privilege, this is a reason why you should pass the Vote.

Sir *Lionel Jenkins.*] In case of a single person, as *Fagg* is, wonders that this Vote should be—"If executed in time of Prorogation, a betrayer of the liberties of the nation."

Resolved, That Sir *John Fagg* do not appear before the Lords, but that he shall be protected by this House against any Judgment that shall be given against him by the Lords.

Resolved, That if any person, or persons, shall aid, or assist, in putting in execution any such [Sentence or] Judgment, they shall be adjudged [and taken to be] betrayers of the rights and liberties of the Commons of *England*, and the Privileges of this House, [and shall be proceeded against accordingly.]

Sir *Thomas Littleton.*] When Serjeant *Peck* was at the Bar, he told you, with some subtlety, "that he had not

offended your revealed will ;” therefore would have the Votes published. Would have it ordered, that the Vote be set up declaratory of your right.

Ordered, That these Votes be fairly written, and posted up at the door of *Westminster-Hall*, [and in the Lobby of this House.]

Sir *Thomas Lee.*] Knows nothing of it, but as a buzz and noise, as if the Great Seal was sent to the *Tower*, with a *Habeas Corpus* returnable *sine die*—Would have the Lieutenant of the *Tower* directed what to do in the case.

Sir *Richard Temple.*] “A *Habeas Corpus* returnable *coram rege in parlamento.*” The Commons have done it for a person in prison—As to what you will do in the case, inform yourselves well in matter of fact.

Mr *Wild.*] The Lieutenant of the *Tower* may stay for an *alias* and a *plures*, and you may know what to do.

Col. *Birch.*] He doubts the Lieutenant of the *Tower's* power of standing out, as is said. Would have the Lawyers ordered to be here, and would adjourn to four o'clock in the afternoon, and meet on this business only.

[The House adjourned accordingly.]

In the Afternoon {Sir *Thomas Littleton* reports, That, according to Order, the Committee appointed to inspect the Lords Journal, went to Mr *Browne's* house, and that Mr *Browne* returned this Answer; “That he could not show the Minutes, or acquaint them with any thing that hath been done this day.”]

Debate on the *Habeas Corpus.*

Sir *Robert Howard.*] We are all in expectation of what the Long Robe will say in this affair. What he has to say, are only his sudden thoughts ; if he considered them, they would be weak enough—Seconds the motion, “that the Lieutenant of the *Tower* do not deliver the prisoners, till he has the Order of the House for it.” That, as he has received them in obedience to you, he may not deliver them in obedience to the Lords. In all these cases there is *corpus cum causâ* to be returned. If it be a Chancery Writ returnable before the Lords, any Writ may be as well, and so they may command any thing at their will and pleasure. If they can do it, 'tis a better way than any

any the Lords can take, to make the whole Law of *England* returnable before them. 'Tis strange that a Writ of Chancery should be sent where the Cause returnable they have no cognizance of, as a *Habeas Corpus*. 1 and 2 *Pb. and Mary*—“No Writ shall issue of *Habeas Corpus*, but shall be signed by one of the Justices of the Court, out of which it issues, upon penalty of the Clerk's being fined.” Plainly not the intention of the law, but to issue these Writs out of the Chief Justice's Court. It will be in some measure a conceding, that what you have already done is not lawful—Therefore 'tis fit to countenance the Lieutenant of the *Tower*, in his obeying the Order.

Mr Secretary *Coventry*.] Any thing you do mistake in this matter is a step you can never recall. *Howard* says, “that whatever Court the *Habeas Corpus* is issued out of, 'tis returnable there.” Suppose the Secretary of State commit a man—*He acknowledged his error, and proceeded no farther.*

Mr *Powle*.] Is sorry that the gentlemen of the Long Robe are so backward in giving you their opinion. Though he is not bred to the Law, shall humbly offer his thoughts. If the Lords have power to send an *Habeas Corpus*, they may take judicial cognizance of any thing. 'Tis worthy to enquire, whether the Lords are a Court of ordinary Jurisdiction; if so, then every thing must be brought before them. He knows no Jurisdiction they have but by Writs of Error. 'Tis true, the Lords have issued out Writs of *Habeas Corpus*. This House also has done it, returnable *coram rege in parlamento*—Sometimes to each Bar; but in no case, but when Members of either House have been detained, (as in *Shirley's* case, 1 K. *James*)—The Writ was returnable *coram rege in parlamento*)—or for some of their necessary attendants. But he knows not when ever the Lords have done it in our Privileges. Moves to pass a Vote, “that the Lieutenant of the *Tower* shall not carry these prisoners before the Lords, before he has first acquainted the House, and received their direction.”

Mr Vaughan.] Now the face of things is altered—The Lords, at this time, taking into their power this House, and the Crown itself. Your Members are taken away from their attendance, and, by combination, they may take most of them, and command your votes how they please. People blush at things at first, but, in time, may encroach boldly upon all—The Lords have made you subordinate, in asking you Questions—Judgment, in the Lords House, upon Petition 39 H. VI. by the Duke of York, did determine the Crown for life, and afterwards to the said Duke—Pray God, no such disposition be intended now!—Your Votes, by these proceedings of the Lords, will have no efficacy—Where Judgment cannot be consequential to a Writ, no Writ can lie—if we are condemned by this Judgment of the Lords, we are of illegality—if we are judged in the Lords House, we may know what that Judgment will be—if in *Westminster-Hall*, that will come before them by Error—it cannot appear to the Judges, till the Warrant be returned, whether to judge, or not—the Lords send a *Habeas Corpus*, in their own case, to determine a thing unreturnable—the Judges are not free against natural justice. A man is in prison, perhaps a Peer out of Parliament—they must judge him as they please! Suppose a Commoner before them, whether legally or illegally: By this usage by them, you may imagine how he will be used.

Mr Sawyer.] Has waited to see the Warrant from the Lords; he saw a copy of it, and, by that, takes it to be void. The Order is no more than “that the Lord Keeper shall issue out a Writ of *Habeas Corpus*. ” There are cases of the Lords issuing out *Habeas Corpus*—Any privileged person, upon the *Habeas Corpus* sent, is delivered. For *Habeas Corpus ad subjectionem*, they are not a Court of ordinary Judicature. He has seen Writs returnable, *coram rege et inferiore domo*, and *superiore domo*, and sometimes *in pleno parlamento*. But, in case of Privilege, the wariest steps you can take—The Lieutenant of the Tower made no steps in it, till he had your direction—if it be a good Writ, you know what you have

have to do. If a good Writ, then 'tis fit to advise the Lieutenant what return to make to choke that Writ—You should vindicate the Lieutenant of the *Tower* from the Lords Vote, that he has done according to law; and, in this he is your Member, and has not swerved from his duty.

Serjeant Seys.] His learning never went out of *Westminster-Hall*—He is no Almanack-maker, to foretell what the Lords would do. *Habeas Corpus* is a good remediable Writ, to have an account why a man is detained in prison, wherein *causa captionis* is declared. We must have recourse to practice—What is done in Parliament to such good Patriots as are conversant in Parliament Journals—It must come before us—And be sure the Lords will say, 'tis warrantable—You may expect that the Lieutenant of the *Tower* will give you an account of them. (At this time we have a Bill depending to prevent delay of delivering of prisoners by *Habeas Corpus*.) Though you look upon the Lieutenant as an Officer upon your account, yet you know not what other matters may be against the prisoners, to bring them before the Lords upon some other account—if committed.

Mr Garroway.] The Law has not been his way of breeding; but is concerned at the waste of this matter. It strikes at all—He has not heard a dispute of your power to commit these persons, but the question how they shall be discharged, whether by any other power than that which has committed them, being committed for breach of your Privilege. Finds that the Warrant for the *Habeas Corpus* is directed to the Lord Keeper, who is cautious, and prudent, and will have a care of what he does—Would have you declare, “that persons committed to the *Tower* for breach of your Privilege, cannot be discharged but by Order from yourselves.”

Sir Richard Temple.] He finds there was nothing alleged in the Lords House, but in case of Privilege, by —. Duty of attendance has Privilege the consequence. After the Lords have done this, they are “a su-

preme Court" to some purpose—The Lords send a *Habeas Corpus*, and discharge whom they please, committed for breach of your Privilege. We must stop this in the beginning. Would therefore declare, "that any person, committed by Order of this House, cannot be discharged but by the same Order that committed. If done, that 'tis illegal." To extend this Privilege of the Lords to Lawyers, not of attendance, but only to plead (the Lords having declared that you cannot commit any but your Members) this is not only an Injunction, but a *superfedeas*, to all you do. He hopes the Lords protection in their pockets will be no refuge for them. This is the next way to stop all your Privileges. Moves as before.

Mr Sacheverell.] Put the Question, "during Session of Parliament, Writs of *Habeas Corpus* in such cases not being granted."

Mr Sawyer.] You do but declare as the law is, if you say, "no Court whatsoever can grant *Habeas Corpus* to persons committed for Privilege, the Parliament sitting."

Serjeant Maynard.] Many things have been said in this matter, and some have been true, and others will not hold. 1 & 2 *Pb. and Mary*, "No *Habeas Corpus* shall be issued out, but signed by the Chief Justice." That in case of their own Privileges, the Lords may procure *Habeas Corpus*, is not denied. Discourses have been general. If the Lords may do it in any one case, you cannot put a general Question. Would therefore confine the resolution to the Debate in Question, "Whether the Lords can grant *Habeas Corpus* to any person committed by this House for breach of Privilege?" Where a Court has power to grant a *Habeas Corpus*, 'tis never granted before that Court is informed of the merits of the Cause—if a Court should deliver a prisoner, committed for breach of your Privilege, he knows what would become of them. You cannot judge of the Lords Privileges, nor the Lords of yours. Two things have been named, 1. "That persons committed by Order of this House, cannot be delivered but by Order from this House." That's too large to be passed by vote, but "*se-
dente*

dente parlamento" is safe. He has not known, nor does remember, that the Lords have granted *Habeas Corpus*, but is certain, that, in this case, they cannot deliver the prisoners. Suppose the Parliament dissolved, and not one called again in seven years, and the persons committed, shall they lie seven years by it! You must have justice in delivery, as well as in commitment of them. Unless you could tell what would be done in this, knows not what resolution you can take. He thinks it not a Question you are drawn into by necessity yet.—Remembers that the Lords have granted a *supersedeas*, but not a *Habeas Corpus*. The King's Counsel is advised with in the return, which possibly may be imperfect, but will give time to mend it, and knows not why the King's Officer should have recourse to you before he makes return of such a Writ. He has known sometimes where a *Habeas Corpus* commitment could not be maintained, and the prisoner has been removed. What if you should do so now?

Resolved, That no Person, committed for breach of Privilege, by Order of this House, ought to be discharged, during the Session of Parliament, but by Order [or Warrant] of this House.

Sir Charles Harbord.] No Writ shall impale the person or estate of any Member of this House. The refusal of a *Habeas Corpus*, and an *alias*, does not, but a *plures* does subject him to fine and attachment, which does both. Therefore would have the Lieutenant of the *Tower* be protected by you, from any farther inconvenience that may arise, by obeying your Order.

Resolved, That the Lieutenant of the *Tower*, in case he hath received, or shall receive, any Writ, [Warrant,] Order, or Commandment, to remove or deliver, any person, or persons, committed for breach of Privilege, by any Order or Warrant of this House, shall not make any return thereof, or yield any obedience thereunto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

[Ordered, That these Resolves be immediately sent to the Lieutenant of the *Tower*.]

Tuesday,

Tuesday, June 8.

Sir John Robinson, Lieutenant of the Tower.] The Black Rod came with an Order to him, from the Lords, to deliver into his hands the gentlemen committed to him by your Order. He has received your Votes, and has them in his hand. (*He reads that Vote relating to himself.*) About an hour after, Sir George Charnock * brought him four Writs of *Habeas Corpus*, for the gentlemen in his custody. He has obeyed your Order hitherto, and shall not desist obeying you †.

Sir Thomas Lee.] Thinks, that if ever any man did you service, *Robinson* has done it, and he deserves being owned by you for it.

Mr. Vaughan.] He has done very faithfully and boldly, and deserves that you should take notice of him for it.

Sir Thomas Littleton.] This being a very extraordinary case, desires the Lieutenant may have the thanks of the House, for his carriage in this business.

Sir John Hotham.] A modest and a bold man deserves double thanks, and he would have it voted.

Mr Attorney Montagu.] With thanks, would have you resolve to assist and protect him in what he has done.

Sir Thomas Lee.] You may remember, that, in the case of *Barnardiston*, you voted "that he had done as a Commoner of England," which is more than thanks.

Mr Garroway.] Would do any thing to put a fair character upon the Lieutenant of the Tower, but would do what will conduce to leave him with the fairer character from the King. (He matters not what the Lords do.) Would have the Vote pass in the same Words as that of Sir Samuel Barnardiston.

Colonel Birch.] He knows very much the worth of the person, and he knows his own interest too. He takes

* Serjeant at arms attending the post, to which his Majesty replied, Lord Keeper. "That he had considered the cir-

† The House of Lords had presented an Address to the King, to cumstances of the matter, and was remove the Lieutenant from his not satisfied how with justice he could remove him."

the

the Vote mentioned to be greater than giving him thanks, and would have it pass.

Sir *Robert Howard.*] Knows not why such a Vote should exasperate the Lords against the Lieutenant. This Vote says, “He has done his duty,” and he would have it declared so.

Sir *Thomas Meres.*] He has done his duty, but in a dangerous concern. It will provoke none but such as will be his enemies to the utmost.

Sir *Thomas Lee.*] Affection and thanks are all the payment and coin this House can give him, and he would have it.

Mr *Powle.*] By this Vote of Thanks, you cast something upon him, that may make the people stare. Would vote that he has done well, but would never thank his fellow-subject—only the King.

Sir *William Coventry.*] Though the Speaker be the first Commoner of *England*, he is but our fellow-subject; yet we have thanked him.

Mr *Sacheverell.*] Moves to his advantage, in some gentlemens words relating to your Order, that the Lieutenant has faithfully discharged his trust.

Thanks were voted.

The Speaker.] *Directing his Speech to Sir John Robinson:* “You having, like a worthy person, and a trusty Commoner, done your duty, in obeying the Orders of this House, in the name of the Commons, I give you the thanks of the House for it.”

*Ordered to be entered upon the books *.*

Sir *Thomas Littleton.*] All this time having been elaps'd, and we having no return of an answer from the Lords, about the last Message for a Conference, to the end we may not fail on our part, would have a Message sent to the Lords, to remind them of it; and, in that interim, the Mace may go into the Hall to require your Members attendance.

* It is not to be found in the printed Journals, there being a *biatus*.

Sir

Sir Richard Temple.] How unusual is it to send such a Message!—Appeals to you, whether in a Parliamentary Constitution it may be done.

"I was said to be the usual form in such cases.

The Speaker.] Informed the House, That Sir George Charnock has, this day, in the Court of Chancery, made proclamation, for Sir John Robinson to bring the prisoners to the Lords Bar.

The Messengers went and delivered the Message to remind the Lords of the Conference desired, with the Bill for exportation of leather. But they were ordered not to stay for an Answer.

The [several Writs of] *Habeas Corpus* were read severally, directed "To the Lieutenant of the Tower," and all of them returnable, "*coram nobis in praesenti parlamento.*"

The Speaker.] They are signed by no body, but indorsed *per custodem magni sigilli F. C. S. (Finch Custos Sigilli.)*

Sir Thomas Stringer.] Observes, that there is no Test of the Clerk of the Crown, which ought to be to the Writ. Moves in behalf of the Lieutenant of the Tower, for your direction. The Question was yesterday, to what place the Lieutenant should bring these prisoners, and returns were argued *in superiore et inferiore domo*, these Writs being returnable *coram rege in parlamento.*

Mr Sawyer.] The less that is said in this case is the most to your service. Here has not been any Motion made to you for this Writ. He advises that the Lieutenant of the Tower make no return upon this Writ. To show the imperfections of this Writ now, would be to teach the Lords how to mend it. He would let the Lords possess their error.

Mr Sacheverell] Agrees for directions to the Lieutenant. The next process, of course, is an *alias*, so 'tis time enough for that, which must be pursuant to this. You may be provided for that against the next Writ.

Sir John Robinson.] Is informed that the Lords have already granted an *alias Habeas Corpus*. He humbly desires to be freed from farther danger.

Mr Mallet.] Thinks you have the upper ground of the Lords, the Writ being returnable in a legislative Court. A legislative Power is unconfined, and higher than inferior Courts. It is for the support of the law that you punish these lawyers.

Serjeant Maynard.] What *will* come of it is not the Question, but what *may* and *ought* to come is proper to be considered. If no return be made to an *alias*, that requires no more than the first Writ; the third Writ is a *plures, quare mandatum tibi directum non sit executum*, and upon refusal the Warden of the Tower is fined.

Sir John Otway.] Here is the Great Seal to these Writs, and should no return be made, it would be of great consequence, and therefore desires some persons to consider of it, and report their judgments. (*All the rest was yesterday's arguments.*)

Sir John Birkenhead.] If you will have any opinion of the Long Robe, the Writ running *ne omittas*, would not omit them.

Mr Attorney Montagu.] The Writ is unprecedented. There never was such a Writ before. The Courts out of which the *Habeas Corpus* comes, have Seals of their own. Though the Writ is not legal, yet it is under the King's Seal. The place the Writ is returnable to is not fitting, *viz.*, the Lords House. They are risen, and gone—If, by way of bail, or fine, it must be es-treated in the Exchequer, and believes they will not judge it there.

Sir Thomas Clarges.] If a Seal be illegal, they say below stairs, the King is deceived in his Grant, and it is voided, and no disrespect to the King by *n.*—But, in this case, would give directions. The Lord Keeper has no Power to grant a Writ, that was never in practice, and he would have a Committee to enquire into the precedents of this matter. If in one case,—They bring in all the causes of *England* before the Lords upon de-tainer, and he believes you will not scruple to call the Lord Keeper to an account for this, as an affront to you, to direct the Writ to the Lieutenant of the Tower;

he

he having a Deputy, it ought to be directed to him. To call the Lieutenant's attendance from this House, is a breach of Privilege.

Sir Richard Temple.] No man can show a precedent of a Writ from either House. You send either the Mace, or Assistants of the Chancery. As to sending *Habeas Corpus*, this is such a proceeding as strikes at the root of Parliament. Can we be made a party to show cause, at the Bar, of this commitment? The last Writ of the three is, "to show cause why he does not execute the Writ."

Sir Charles Harbord.] 'Tis to bring in the body, and then to show Cause, without Question. 'Tis a Breach of Privilege upon your Member.

Colonel Birch.] He hears of great errors in this Writ, but it is said, "to speak of them would be to make the Lords mend them." But, he thinks, there is no such Writ. One place is yet penetrable, and that is, by Conference, and rather than stay for a *plures*, would go upon it now. If this Writ be not Breach of Privilege, he knows not what is.—'Tis an unusual Writ, and if there be no precedent for it, a greater fault than before. Would debate these things at a Conference, and send for it.

Sir Thomas Lee.] Understands not the nature of these Writs, but looks not so much upon the Writ as the Privilege. How can the Lords take cognizance of this? —A new invention to keep people in prison! The Lord Keeper has great interest with the Peers, and he sends these Writs. He fears that *Westminster-Hall* will scarce dare to judge these Writs, and then what will be the case of you or I, if the Parliament were up, and another Parliament were to be, to them that are not of it? To say, "that the lawyers are committed by you appears not yet, because there is no return made by the Lieutenant" A fine way of the Lords to judge of any man's liberty whatsoever! Would have the Long Robe consider of this till to-morrow, and you to take care for the future, at the Lord Keeper's, that these Writs may be for

for ever stopped, and that all may be buried at this time.

The Speaker.] You know not yet regularly, that, by order, these Writs were issued out by the Lords.

Mr. Garroway.] As long as the Lieutenant can take his measures upon the Debate, would assert your Rights as high as any man, and is satisfied the Lieutenant can make no return of the Writs.—And then some particular instructions may be given him to carry himself for the future.

Sir Nicholas Pedley.] 'Tis not for your service to appoint a Committee. 'Tis a thing not merely of discourse, but must be made out by search, and the Long Robe may better serve you by particularly informing themselves about these Writs.

Sir Thomas Lee.] You make the Long Robe to be a particular Committee, and to report their opinion to-morrow morning. If it be left general, 'tis every man's work, and no man's work, and so nothing done.

Sir Thomas Meres.] They may consider, at five o'clock, what they are to go upon, and then to their studies to report to you to-morrow their opinions, and meet again at seven o'clock.

Mr Mallet.] Moved for Sir Harbottle Grimstone to be one.

Sir Harbottle Grimstone.] Defires Mallet, then, in his stead, to officiate for him in Chancery. (*merrily*)

Sir Thomas Littleton.] Moves to have some persons sent to the Lord Keeper, to know upon what grounds he issued out these Writs.

Mr Garroway.] There will be nothing of reflection, or dishonour, to the Lord Keeper, in sending to him. You have done things of this nature. Possibly this may have been done with some irregularity, and none but the Lord Keeper can inform you of it.

Mr Secretary Williamson.] Would not go out of the way, unless he needs must. This Message is unusual.

Mr

Mr Secretary Coventry.] If the Lords Journal may be commanded not to be shown, and you cannot have an account of this Writ there, they may command the Lord Keeper, being their Member, not to declare anything.

Sir Thomas Meres.] 'Tis intended to send to him as Lord Keeper—For all Lord Keepers are not Members of that House, and no doubt the Lord Keeper has an Order to justify him. Would have the Vote conditional, "in case the Journals will not be shown, then to go to the Lord Keeper."

Sir Edward Baynton.] The Lords Journal is never desired to be shown, but on the last occasions. The Minutes were not entered, and therefore you could not see it. You may leave it in the power of the Committee, to go to the Lord Keeper, or not.

Sir Thomas Lee.] Though in truth he was not denied sight of the Journal, yet it was excused, because it would not be ready by the Lords sitting. When the whole matter appears, you may send a *supersedeas* to these Writs.

Wednesday, June 9.

Sir Thomas Clarges reports the Search of the Lords Journal, and Clerk of the Crown's Office, for Writs of *Habeas Corpus*. There was a Writ of *Habeas Corpus* in Queen Elizabeth's and King James's time. But none granted but in case of Privilege, expressing the several names of the Peers, in whose cases they were. Some are returnable *coram rege in parlamento*; some *coram superiore domo*. There are Warrants from the Speaker in the case of Shirley and Turner, sent out to Sir — Carew, all returnable *in praesenti parlamento*. Many ancient books of returns were not in the Clerk of the Crown's Office.

Upon consideration whereof, the Committee made these Votes, which the House agreed to.

Resolved, 1. That no Commoner [of England,] committed by Order or Warrant of the House of Commons, for Breach of Privilege, or Contempt of that House, ought, without Order of that House, to be, by any Writ of *Habeas Corpus*, or other authority whatsoever, made to appear, and answer, and do, and receive a determination in the House of Peers, during that Session of Parliament, wherein such person was so committed.

2. That

2. That the Order of the House of Peers, for the issuing out of Writs of *Habeas Corpus*, concerning Serjeant *Pemberton*, &c. is insufficient and illegal; for that it is general, and expresses no particular cause of Privilege; and commands the [King's] Great Seal to be put to Writs not returnable before the [said] House of Peers.

3. That the Lord Keeper be acquainted with these resolutions; to the end [that] the said Writs of *Habeas Corpus* may be superseded, as contrary to Law, and the Brivileges of this House:

4. That a Message be sent to the Lords, to acquaint them, that Serjeant *Pemberton*, &c. were committed, by Order and Warrant of this House, for Breach of Privilege, [and contempt of the authority] of this House.

Resolved, That a Conference be desired with the Lords, upon the subject-matter of the last Conference.

There was great haste in these Votes, least the Gentleman-Usher of the Black Rod should call the House to attend the King before they could pass.

Colonel *Birb.*] Would, before we rise, pass some Reslove against this horrid debauchery, committed in Elections of Members, that the people may see you intend to do something in it.

The Black Rod commanded the attendance of the House of Commons upon the King in the Lords House, where the King spoke as follows :

“ *My Lords and Gentlemen,*”

“ I called this Session for the settlement of Religion and Property, and no endeavour of mine hath any way been wanting to it. I have interposed no busines of my own, and have continued this Session much longer than I intended, for the settlement of the kingdom, and did intend this an Adjournment, for the preservation of the good and wholesome laws that have had such a progres already. But the malice of our enemies hath raised so great differences betwixt the two Houses of Parliament, that I can find no expedient for the composing of them, but a Prorogation, which I very unwillingly make use of. I shall meet you here again in winter, and I hope you will take so great care of the Public, as not to seek new differences, nor to revive the old.”

Then the Lord Keeper, by the King's command, pronounced the Prorogation, to the 13th of October, 1675.

Debates in the House of Commons.

From the Year 1667, to the Year 1694.

Wednesday, October 13, 1675.

THE House met* [When the King in his Speech gave them to understand, "That he met them with a more than usual concern for the event of the Session : That he hoped they would avoid the like Debates, which occasioned the last Prorogation : That if any thing of that kind should arise, he desired them to defer the discussion of it, till they had dispatched such public Bills as might conduce to the good and safety of the Kingdom ; and that he particularly recommended to them whatever might tend to the security of the Protestant Religion, as established in the Church of England."]

The Sequel was as follows :

"I must likewise desire your assistance in some supplies ; as well to take off the anticipations which are upon my revenue †, as for the building of ships. And though the war has been the great cause of these anticipations ; yet I find, by a late account I have taken of my expences, that I have not been altogether so good an husband as I might have been, and as I resolve to be for the future ; although, at the same time, I have had the satisfaction to find, that I have been far from such an extravagancy in my own expence, as some would have the world believe. I am not ignorant that many would prevent the kindness of my Parliament to me, at this time ; but I as well know that your affections have never failed me ; and you may remember it is now above three years since I have asked you any thing for my own use."

These points were enlarged upon, as usual, by the Lord Keeper.]

The King's and Lord Keeper's Speeches being ended, the House of Commons came down, and sat sometime, looking on one another in a profound silence, 'till at length Sir Thomas Meres broke silence and said, "He was sorry to see the House, as it

* The Compiler was absent 'till Monday the 18th.

† It was then generally thought, that the King was in such straits,

that if money could not be obtained, he must turn to other Councils, and to other Ministers. Burnet.

were

were, in an amazement, and was afraid it might prove ominous, and therefore prayed the Speaker to acquaint the House with the substance of the King's Speech."

The Speaker excused himself for that, not daring to rely so much upon his memory. It was then moved, that some Bill might be read, and Sir *Thomas Littleton* desired it might be that of the last Session, "for appropriating the Customs to the use of the fleet." But the Speaker objected against that, because it was indorsed on the backside, and not fair written, and he had no brief of it. Upon which Sir *Nicholas Carew* told him, he had a Bill which was not indorsed, but fair written, of which he had a brief. It was a Bill, "to incapacitate any Papist to sit in either House of Parliament, without taking the Test in the late Act against Popery, &c." It was read accordingly, and ordered a second reading *sine die*. After this, Mr Secretary *Williamson* brought in the King's Speech, which was read, and thereupon a motion was made, "That thanks might be given to his Majesty for his gracious care of the Protestant religion." To which Mr Secretary *Coventry* answered, "That it would not be decent to separate one part of the King's Speech from the other." Upon which some disputes did arise for a time, till it was moved, that the consideration of the Speech might be adjourned till *Monday*, which was agreed to, provided the House might be adjourned till that time, which was accorded; each party hoping for strong recruits.

Before the House adjourned, there happened a passage, which requires something to be said antecedently to make it the better understood.—In one of the actions between the *Germans* and the *French*, after *Turenne's* death, Colonel *John Howard*, brother to the Earl of *Carlisle*, amongst many *Englishmen*, was killed, which being told for news in *St James's Park*, it was reported, that Lord *Cavendish*, and Sir *Thomas Meres*, being together, when they heard it, should say, "That they were well enough served, and that they wished that never any *Englishman* might fare better, who was to serve abroad against a Vote of Parliament." Upon which, a paper, that called Lord *Cavendish*, and Sir *Thomas Meres*, "incendiaries," with other such language, was given about, subscribed "Thomas Howard of Richmond and Carlisle." This paper was brought into the House by Sir *Trevor Williams*, who informed the House, "that it was found the night before in *St James's Park*, by his Servant, and given unto him, who finding two honourable Members shamefully traduced in it, could not but acquaint them with it," and having no opportunity before this morning, showed it to the Members concerned in the House. Upon which Lord *Cavendish*,

Seeming much surprised at it, went out of the House in heat, which was the beginning of the thing. Mr *Russel* then acquainted the House, "that he saw some disorder in that Lord, and, being afraid of the consequence, desired he might be commanded not to go out." Sir *Trevor* then told the aforesaid story, and the paper was read, *viz.*

"Sir,

"The last severity upon Roman Catholics having forbid me the ambition to any place or pretension at Court, and the severe usage of the gout making me unfit to appear in any company, but where I am well acquainted; besides a most sensible loss of my poor brother *John*, killed at *Strasbourg*, I resolved not only to retire in person, but thought, from all temptations this world could give me, and to spend the rest of my days with such domestic and private content, as a man of those principles, and some sense, might hope for, in an honourable retreat. But it happens by a certain, though unjust and malicious accident, that I am awakened from the quiet and repose I hoped for, and find myself engaged by the nearest ties of friendship and honour, (obligations I have always esteemed dearer than my life) to let some unworthy and base people see that I am yet alive. Not long since, in *St James's Park*, Lord *Cavendish* and Sir *Thomas Meres*, two bold and busy Members, upon the news of the *French* retreat over the *Rhine*, where many *English* were reported to be killed, (which, amongst all honest men, was much regretted) these barbarous incendiaries, with a most plausible temper of such worthy patriots, openly declared, "that it was but a just end for such as went against any Vote of Parliament." With all respect to that honourable House, that cankered and malicious saying will neither deserve the thanks of that House, (it being false as to my brother, who went by his Majesty's command, at the head of his Company, before that Vote was in force) nor the approbation of any man out of it. I will not trouble myself, nor others, to let you see, by any exact character, how these two worthy and unbyassed Senators ought to be credited. Next *October* will produce such effects of their care and capacities of securing property and religion in a Christian and humane way, that I believe I shall be called to the Bar, to answer their flanders, as I presume they will call them; yet I doubt they will not, for though an ill orator, I shall most certainly prove what I write. As for any other way of revenge, I do not any way apprehend it; for men that are given to spit blood,

feldom

seldom draw it. Sir, I have troubled you too long with my just resentments, but knowing the share you have always taken in my concerns, I must beg of you, that you will in *St James's Park*, at the *Mall*, disperse these copies, it being all the way that is left to do right to the dead; and, to assure you, that I will not do you the ill office of dispersing a libel, I will sign the copies with all my titles.*

From *Aftstead in Surry*, T. HOWARD, of *Richmond and Carlisle.*"
[Aug. 30, 1675.]

Lord *Cavendish* and Sir *Thomas Meres* were enjoined not to prosecute any quarrel against Mr *Howard*, [or to send or accept any challenge in order thereto, without acquainting the House.]

Then the House adjourned to

Monday, October 18.

Resolved, That Sir *Trevor Williams*, Sir *Anthony Irby*, Sir *Thomas Littleton*, Sir *Charles Harbord*, and Mr *Crouch*, be appointed to go to Mr *Howard*, (who, by reason of his indisposition of the gout, could not attend the House,) to know of him whether he will own the aforesaid paper.

Sir *Philip Musgrave.*] Moves to proceed in the matter of Supply, and Religion, mentioned in the King's Speech, and to appoint a day for each of them.

Sir *Edward Dering.*] Seconds the motion, and hopes for as full a concurrence from every gentleman, as from him. Religion is the honour of the nation, and has always been the care of this House. Little progres was made the last Session, by reason of the difference with the Lords; but would begin now early, that we may ripen things to perfection before we rise. Another thing, as properly under our cognizance as Popery, is, regulating mens manners, very worthy of our consideration. Under that notion of religion, it may be done. We want *censores mirum*, as well as Inquisitors of Faith—Thinks, that else we cannot see Religion prosper. Our dominion of the sea is *magni nominis umbra*, without strength there—'Tis not prudent to trust the nation long to the *French* army's going into winter quarters. These are the heads of the King's Speech, and would not have them jostle for place; therefore moves to-morrow for Religion, and *Wednesday*.

* This Paper is not inserted in the Journal.

for the King's Supply. 'Twill be much for your honour abroad to be so employed ; therefore would have these certain and speedy days for the consideration of them.

Sir John Holland.] The King is pleased to desire a supply ; we are all here to speak our minds freely, and hopes we shall with that modesty which becomes us, and desires to be heard out with patience and favour. He is no honest man, that loves not the King, the Government, and the Nation. If we consider, that, after such supplies, never given before, (*Edward III.* who reigned above fifty years, never had near this King's Supply,) now to have every branch of the revenue anticipated ; and not only that, but debts so great, to the ruin of the people ; and, besides, the King's wants so great, as to be forced to break the credit of the Exchequer, to the ruin of widows, orphans, and numerous other people, as it puts so great a damage upon our *English* manufactures.—He will go no farther, for instance, than his own country, the city of *Norwich*—These are necessary to the King's sovereignty, and preservation of trade—The fleet neglected, and his nearest and most powerful neighbours so armed—The *French*, by over-balance of our trade—When you were told, the last meeting, that the *French* commodities imported, over-balance to the value of 900,000*l.* and though *London* is not very sensible of this, yet the country, from whence supply must come, is impoverished by it. The Chimney-money and Excise, brought hither, and the Nobility's expences, increase the consumption here, and hither the money will come. By this means, the country, in some places, is drained of money, and, by reason of the cheapness of all commodities, farms are cast into gentlemens hands, and no hopes of remedy on their parts ; and the farmers come here, and set up taverns, and alehouses, and keep lodgings, and there are no hopes of their return back into the country. The humour of the yeomanry is changed ; the youth are not bred up as they used to be. This, in short, is our condition ; and yet, for the King's necessity, as well as our safety, the King must have supply ; else

else the people cannot be protected ; but, if the charge of the Government be greater than the people can bear, the Government cannot stand, though supported by arms. But, should it be so endeavoured, it cannot be long endured by the temper of the *English* nation. Would to God he could say, this was not our condition ! There is a necessity that it must be said. He cannot but think himself bound in conscience to take this opportunity to say, that the charge of the Government is greater than the nation can bear—Cannot but say, the expences of the Court may be reduced—especially the matters of the Treasury may be better managed. The truth is, the prodigal and excessive way of living now, was unknown to our forefathers, who kept hospitality. 'Tis a leprosy that has almost overspread the nation—Hears an unusual discontent, and want will put men upon desperate resolutions, and from that arose those unhappy times we had—This may bring us again into the unhappy hands we were in ; and [we shall] be an easy prey and conquest to whoever will over-run us—Was, am, and ever will be, for the due rights of this House, and against the Peers encroachments ; would not give, and, he hopes, the House will not be ready to take, new occasion of difference. Upon the whole, moves to enter into a present consideration of an humble Petition to the King, with the Lords concurrence, in which, in all dutiful, modest, and loyal manner, we may represent to him “the present poverty of the nation, together with the mischiefs of unseasonable Prorogations ; and that we be continued without Prorogation, 'till we have dispatched Bills for the security of Religion and Property ; and then declare, that we will give Supply to provide shipping and stores, to be equal, if not stronger, than our neighbours”—If he, in any thing, has mis-expressed himself (as he is the worst judge) hopes a favourable construction of the House.

Mr Streete.] Seconds *Muggrave*.

Sir Thomas Lee.] When he considers the old course of Parliament, what has been moved is not the usual way—Upon your books, a motion being made for a

Supply, the House went into a Grand Committee; therefore moves for it to-morrow.

Sir Robert Carr.] Seconds the motion for to-morrow, to consider Anticipations and Supply.

Sir Thomas Meres.] Would have that ancient Order, which *Lee* mentioned, read. When that Order is lost, the House of Commons is lost. If there be occasion for Supply, let's see it at a Grand Committee.

Mr Neale.] Has heard, that the Lord Treasurer has brought the state of the revenue into the Council. Would see that here, to be your guide the better, in what you are to do; and moves, that all the money may be employed to the use we give it, on penalty of treason.

The Order mentioned was read, *viz.* "That a motion being made for a Supply, is not presently to be entered upon, in the House, but the consideration referred to a Committee of the whole House." The date of this Order does not appear.

Mr Sacheverell.] Is willing to take Anticipations upon the Customs, and the King's debts, into consideration, as soon as may be—To be plain, he believes there is no need of a Supply, when things shall be well considered.

Sir Thomas Meres.] Sees there is no occasion of a Supply as plain as the Sun that shines, and believes he can make it out—No man has yet made a direct motion but *Holland*, which is a conditional one, and a very good one; so that a Committee cannot go upon it, without being first moved by some-body.

Mr Secretary Coventry moved it.

Sir John Ernly.] Must inform the House, that we want a squadron of ships, and thirty at least, of first, second, and third rates; therefore seconds *Coventry*, for Supply for building of ships.

Resolved, That this House [will] to-morrow, at ten of the clock, resolve into a Grand Committee, to take into consideration that part of his Majesty's Speech, which relates to a Supply for taking off [Anticipations, upon his Majesty's Revenue] and building more ships.

Wednesday, [was appointed to consider the settlement of] Religion.

Mr Garraway.] Upon a motion for a Committee to consider what Bills, presented the last Session, are fit now to brought in, said—He hopes we shall not make a Committee, Lords of Articles, as in Scotland.

Col. Birch.] Would have a day appointed to consider the present state of the nation. He likes not shuffling the cards again, now the game is pretty well—But meeting people at church, and at market, he finds them full of censures and contempts, that we examine things no better. If this House does not represent the state of the nation to the King, who can, who dares do it? This main thing sticks with him, that the charge of the Government is greater than the nation can bear. Finds that some go up, and some go down; but whoever goes up, or whoever goes down, the King pays the reckoning. Some gentlemen know this very well. Therefore would have Monday to consider the state of the kingdom.

[It was appointed accordingly]

Tuesday, October 19.

Sir Thomas Littleton, and the rest of the gentlemen mentioned, who were sent to Mr Howard, reported, “ That, in obedience to the Order of the House, they went to Mr Howard, to demand of him, whether he signed, or owned, the paper then produced to him ? ” Who replied,

“ Gentlemen, Being informed of some displeasure of the House of Commons (for whom I always had, and ever shall have, a most dutiful regard) I doubt, that, if I should give any Answer to your Message, being a person unexperienced in such affairs, I might give occasion of their displeasure; and therefore I must beg your pardon; and I must answer only to what can be proved against me; and, in the mean time, I do now again, as I did, before Mr Collingwood, to the Speaker, promise, upon my word and honour, not to question any person for any thing relating therunto.”

Mr Sacheverell.] Moves to have him committed to the Tower.

Mr Powle.] For a private gentleman to vilify your Members with the terms of “ unworthy, byassed Senators,

nators, barbarous incendiaries, busy Members!"—If men without doors may do this, it takes away liberty of speech. Former times have had nothing like it; only in Queen Elizabeth's time, *Arthur Hall*, who was a Member, (this gentleman none) for publishing a libellous book, called *Opera Tenebrarum*, was called to the Bar, and giving no satisfactory answer, was committed to the Tower, and fined five hundred pounds, and not to return thence until he had given satisfaction; and hopes this gentleman will be so punished.

Mr Mallet.] Would put the thing in a way of proof, since *Howard* puts it upon you—There is another precedent, of *Withers* the poet, which, if true, does us justice—He requires it, and would vindicate the Members reflected on.

The Speaker.] Knows not when you have sent for a man in Custody, upon no other ground than what's before you.

Mr Secretary Williamson.] If the gentleman refused to appear, and you had the proofs before you, then it would be proper to send for him in Custody. He would have a better answer than is yet given; but sending for in Custody is a kind of punishment before proof. Doubts that the Question proposed is not so seasonable in the condition the gentleman is in.

Sir Charles Harbord.] The offence is yet neither proved nor confessed—Would have a day's time; and if he cannot come, he may be brought hither, before you commit him.

Sir Thomas Littleton.] Knows the gentleman, and has a value for him; but no-body will deny this to be a Breach of Privilege. To the purpose—A man, you suppose, has broken your Privilege, and he keeps his bed, and you send to him, and he will not tell you whether he has broken your Privilege or no. You send for men, upon presumption of breach of Privilege—if the gentleman cannot come to attend you, he may remain in Custody of the Serjeant. It has been a hundred times done in breach of Privilege only.

Sir

Sir *John Ernly.*] Looks upon committing *Howard* as a pre-judging him, it not appearing to be his act—Sending for him in Custody is a punishing him—Would you have a man confess a thing against himself? Go in the common way; send for him, but not in Custody.

Sir *Robert Howard.*] Is as much for the honour of the House as any man, although related to this gentleman, &c.—He is one so little versed in business, that he may err in his answer; he may think he has answered very well. If it shall be made appear to be his act, he shall disapprove it as much as any man else—When you send for him, and he appears, and you censure him, he will abide by that censure.

Sir *John Birkenhead.*] You send for people in Custody, when afraid of an escape. He is a prisoner before you send for him, by his lameness of the gout—When a felon is upon his tryal, he must speak with his shackles off, at as much ease as may be. The loss of his brother, whom he loved more than his own life, might make him utter, it may be, something he should not.

Lord *Cavendish.*] The words, the paper says, he should say of Colonel *John Howard* (whom he knew not) are, “That 'twas a just judgment he was killed;” which was a foolish thing; and he will not own saying of a foolish thing. But possibly he might say, “He was sorry this gentleman should die fighting against the interest of his country.”—If he said it not then, he does now say it.

Sir *Thomas Meres.*] As to saying, “he was sorry that an *Englishman* should die in that cause,” he is sorry for it; and 'twas always the thought of his heart, and is still so.

Sir *Thomas Lee.*] Had always a respect for this gentleman; but 'tis not what respect you show the gentleman, but how this matter will stand upon your Journal to posterity. Every paper, read by Order in the House, must be entered; and for sending an answer not direct to a paper of so great reflection, what will appear upon your books but sending a Committee of yours? (which, by the way, was a mistake to a man that has offended

you.)

you). For your honour, you must send for him ; and nothing else moves him to speak in it.

Sir Charles Wheeler.] Whenever a mistake arises amongst persons of honour, all quarrels cease. This here arises upon such a thing ; and no question but *Howard* will retract what is grounded upon a mistake—If this be so, an end may be put to this matter. He is persuaded that *Howard* had not the least intent to reflect on the House ; because, when gentlemen fall out, they invent and take up names and words provoking, though not true ; therefore would have *Howard* asked, whether he had the least thought of reflection on the House.

Mr Stockdale.] Would not have *Howard* fore-judged, but let him have a day for notice to appear.

Sir Nicholas Carew.] Is sensible of the gentleman's infirmity, the gout ; 'tis his own. Has known him long to be an honourable person ; and hopes, as to this matter, he will be innocent—Would have a day appointed for his appearance.

Ordered, That Mr *Howard* be sent to, to attend this House on this day seven-night.

Sir Nicholas Carew.] Be the Paper whose it will, it is a scandalous Paper ; and moves to have it burnt.

Sir Thomas Littleton.] If the Paper be burnt, we shall not have it here to prove it. Would not have it burnt till the whole thing be over.

Mr Garroway.] 'Till you declare it a Breach of Privilege, what will you send for *Howard* for ? Therefore moves to have it voted a scandalous Paper, and a breach of Privilege.

Col. Birch.] The Paper might be read, before you put the Question ; but not upon an adjourned Debate.

The Speaker.] The Paper was once read, and needs not be read again.

The Letter was read, [as above, p. 292.]

Sir Thomas Meres.] If he speaks not, he may be thought to yield to the report of the letter. He has had Papers, long before this, thrown into his House, and has

has been so far from giving you the trouble, that he has not so much as spoken of them ; but, sa to this Paper, it was handed to him in the House, and he shewed it to Lord *Cavendish*.

Resolved, That the Paper, produced and read, is a scandalous Paper, and a breach of the Privilege of this House.

The Speaker, leaving the Chair, and then taking it again, upon the confused calling of Sir *Thomas Jones*, and Sir *Charles Harbord*, into the Chair of the Grand Committee ; *Jones* being very forward to take the Chair, *Meres* gave him a check, and said “he would rather have *Harbord*, for his modesty.”

Sir *Nicholas Carew*.] Moves for the Question (upon *Jones*'s saying, he has been named) and would not have him laid aside without a Question.

Sir *Thomas Jones*.] Is sorry that his name has brought a Debate ; but, being mentioned by most about him, he rose up, but without any indecency. Desires he may be no farther named, but that Sir *Charles Harbord* may take the Chair.

Mr *Mallet*.] Hearing those about *Jones* say, “ Why do not you go up ? Why do not you go up ? ” That makes him dislike it.

In a Grand Committee. On the King's Speech.

Sir *Charles Harbord* in the Chair.

Sir *Thomas Meres*.] Your first business is, taking the Anticipations upon the Customs into consideration. Pray let us see what they are.

Mr *Sacheverell*] If there be such Anticipations, they are either occasioned by the war, or voluntarily. If voluntarily, he believes no-body will take them off. *Birch* said once, “ four pounds *per head*, *per month*, might defray the navy charge ; ” and *Pepys* said, “ it cost not so much.” Suppose the fleet consisted of one hundred sail, and forty-nine ships of attendance, and, according to *Pepys*'s list, 30,000 men, it will not come, for four months, to 800,000*l.* We all know the tax-prices, &c, and we in peace, 1,700,000 or 1,800,000*l.* And if

this

this cannot defray the charge of 1,200,000*l.* leaves you to judge. Now, let the managers of the Navy show how they have expended 1,700,000*l.* and they say something.

Mr Waller.] Hears something said, that makes him stand up, for the honour of King and People. There is no other trust in the Government than where the Law makes it—The King has it; and if we supply, or not supply, we have our trust. Sees there is much stress laid upon that part of the King's Speech relating to “Anticipations.” The King says—“There has been ill husbandry, besides what fell out in the war.” And the King must take it upon him. But *Bratton* says, “The King cannot err”—“Ill management!”—Between the wisdom of the King, and direction of the Law, you may know where the fault is. We believed, when the King was called back, that the Law was come again. Pray let not the Standing Army be brought under that consideration of Anticipations. The King speaks of the Government; he owns his care of it; and no Government can be more advantageous to him than this. ’Tis a monarchy. The King governs by Law. Let us look back to the evils we had, in order to prevent more. There was loan, and ship-money, and extremes begat extremes. The House would then give no money. Let the King rely upon the Parliament; we have settled the Crown and the Government. ’Tis strange that we have sat so many years, and given so much money, and are still called upon for Supply. The Lords may give Supply with their own money, but we give the peoples; we are their proxies. The King takes his measures by the Parliament, and he doubts not but that all the Commons will supply for the Government; but giving at this rate that we have done, we shall be “a branch of the revenue.” They will “anticipate” us too. But, let the officers say what they will, we will not make these mismanagements the King's error. ’Tis better it should fall upon us than the King. We give public money, and must see that it goes to public use. Tell your money, fix it to public

public ends, and take order against occasions of this nature for the future. We cannot live at the expence of *Spain*, that has the *Indies*; or *France*, who has so many millions of revenue. Let us look to our Government, Fleet, and Trade. 'Tis the advice that the oldest Parliament-man among you can give you; and so, God bless you!

Sir *Thomas Lee.*] Expected to have known what occasion there is for asking money for these Anticipations, or what they would ask. If gentlemen knew, they would have told us before now. He expects it.

Sir *Robert Howard.*] If it be expected that he should give you an account of what belongs to his office, he is ready to do it. As to former Anticipations, he shall wave them, but shall tell you how late Anticipations have been struck upon money growing out of the revenue. If you please to know this, you shall. He believes, in tallies, not satisfied, there is not much exceeding 800,000*l.* value; some of this charge, about 80,000*l.* is growing out. Tallies, not satisfied, 800,000*l.* value; some other charges to the bankers, as a year's interest; with that prospect, the whole may be a million; by which charge the Excise is wholly taken up; not above five or six thousand pounds will remain, at the most. He has nothing to tell you, but the King's condition, and will make all this appear indisputably, if you please, in writing; and if he does not now explain himself, he will do it fully. In his office, a Bill for a tally is thrown down as ready money. This sum that he has mentioned he will abide by.

Sir *Thomas Meres.*] Five years ago we were at this work. What good came of it? We strove then for a fund of 300,000*l.* a year; some for 7, 8, and 9 years; so that, with interest, then the debt might be 1,600,000*l.* and had more help to pay it, by a subsidy of one shilling per pound upon land by subsidy. When we paid this debt, and for ships, neither was done; and if we are so easy, and so kind, and never punish any body, by laying our hands upon our purses, let that be their punishment

ment that have done ill. Expences, we see, are more and more, and things worse and worse ; and no occasion of Supply. There's no end in giving, to take off these Anticipations, and we cannot in conscience do it. Our ancestors gave not their money so away, because they would be bountiful. The people give us no such authority. The defray of all public charges, and the King's living, may be made out sufficiently by the revenue. But the charge of the Government is not supportable, at this rate.

Lord Cavendish.] If this be admitted a supposition, then we must satisfy all debts. The people have trusted us with their money, and *Magna Charta* is not to be given up, with their money, and liberty, into a bottomless pit. Moves for the Question, “ Whether an aid shall be granted for taking off these Anticipations from the King's revenue.”

Sir John Duncombe.] 'Tis hard to calculate the charge of an expensive war, till the end of it. *Howard* has told you all the particulars of Anticipations, clearly and faithfully, and with the most, he believes the sum to be between 7 and 800,000*l.* You know the constitution of the Government; when it has war, it comes to you for aid—The King tells you he was engaged in a war, and over-run his measures in it—He is so much in debt, that he knows not whither to go but to you ; he knows it is hard to come by, and you have been often asked ; but if the King be at ease, you are all at ease. If the Crown be in debt, 'tis a misfortune to the creditors, and many people besides. It has not cost so much money, in any three Kings reign, as this war has been—This is the King's condition, as it appears to him—Would not put extremities to work, as it is a dangerous thing.

Mr Sacheverell.] Would have *Duncombe* explain what he means by “ putting extremities to work.”

Sir John Duncombe.] Means, by “ putting extremities on work,” making the Crown, and them that depend upon it, uneasy.

Mr

Mr Powle.] Is sorry to hear any thing laid upon the King in this busines ; he thinks him to have the least part in it. Had he those counsellors and officers constantly to represent to him the state of his revenue, it would not be thus. But some officers may find private advantages out of public necessities. The war was carried on before without any Anticipations ; and, since that, many great sums have been received ; as the prize-money, *French* and *Dutch* money, and advances on the Excise, and Hearth-money, and now two years of peace, and then three fourths of this Tax to come in. No fleet, and hardly necessary repairs upon the ships in harbour, and the debt yet more, not less. Is not this a sum to astonish every body, in time of peace ? What will become of us in a foreign war, if this expence be in peace ?—Fears that the Church-revenue may go in time of war. He believes the Revenue so great already, that, in a short time, these Anticipations may wear off. Supply is, in this case, but to increase “ ill husbandry.” As to the navy, believes that due consideration, in time, may be had of it ; and, when we are free of these Anticipations, we may go on more chearfully with the other.

Mr Secretary Coventry.] A considerable charge of the Revenue is left out ; the foot army, the ten regiments. He, as in a double capacity, as servant to the King, and Member of the House, has informed himself, as well as he can, in these things. Redressing of Grievances, and giving Supply, is the business both of Court and Country. The point before us is, whether we shall first go upon Supply, or enquire into Mismanagements. 'Tis easier for the King to redress a Grievance, than for the people to give a Tax. 'Tis necessary now to lay open the state of the kingdom ; 'twill be too late to think on it on *Monday*, if you pass your Vote against taking off the Anticipations to-day. By the last intelligence, the *French* had fifty-five sail of ships at sea, and we seven, and so far out of repair, as not in two or three months to be reparable. The trade and peace of *Europe* is ours now ;

and a short time may show that we are upon the precipice of the most inevitable ruin that ever was. 'Tis an unsafe condition we are in, when no longer safe than whilst our neighbour pleases. Suppose Articles concluded at *Nimeguen*,—that hour peace is made with *France* there, Marshal *Montmorency*, an old, and considerably experienced officer, may land thirty thousand men in *England*. He may draw them out of *Maastricht*, and the rest of the garrisons of *Flanders*, being all full, and may march with what army he pleases, 40,000 men hither, if he pleases. If you cannot oppose him at sea, our condition is desperate. If men be faulty, let them answer it that manage it, and consider, whether time else will not be lost, for consideration of the Navy. When you have done this, for the present, agree with the King for a certain revenue for the Navy, for the future. Let us not make our faith so much upon what may be showed us, as upon what is already showed us. If it be not meant to maintain ships, when you have them, and whenever God shall bless you and the King with a right understanding, and leave all you would have, without a navy—Your Vote can furnish the King with credit; but, without it, neither your hearts nor your prayers can build ships. Suppose a town on fire, and a man steal the buckets, he deserves to be hanged, but believes the magistrates will not resolve, therefore, never to buy more buckets.

Lord *Cavendish*.] You are told, “you are upon a precipice of ruin;” hopes, therefore, that the King will never contribute towards making of peace, to be over-run ourselves.

Mr Secretary *Coventry*.] If the King should say, he would not make a peace, it was the way to have it.

Sir *Thomas Lee*.] We are told of these Anticipations, from a maintaining a land-army. Believes you will not approve of them. He was of the Convention, and remembers that, when the revenue was there debated, and 'twas said by Mr Attorney *Finch*, that 1,200,000*l.* a year was dangerous, 'twas all you had to give, before
the

the Chimney-money was given in a good kind humour to make that revenue out. Then we were told of great debts, and that we must give great sums, and we granted great sums, as the additional duty upon wines, to pay the debts. Remembers 'twas then said, (he has a loose remembrance, that 'twas Sir *Thomas Clifford*) "Now give land-tax, and he would pawn his reputation you should never have occasion to do it again." Now, after that time, miscarriages, and the war undertaken without Parliament. You were told "there wanted no money; and therefore there was no Parliament," in Lord *Arlington's* Speech here—That revenue had an addition for debts anticipated. This being the case, and being now told, "Take off these Anticipations, and they have the additional duty yet some years remaining, sufficient to take off the debt," pray put the Question.

Sir *Thomas Meres.*] Be the Anticipations what they will, he shall give his Vote to pay none. Has observed, that if once we begin to tumble papers over, we are wearied out, and give money, and leave the Question. Would do more for the elder brother, the Bankers, than for the Anticipations. 'Tis said, "do not make Councils desperate; therefore give money;" but, he says, therefore give no money. At *Christmas 1671*, such desperate Councils followed giving money, that he has no mind to mention them, repeal of no less than thirty laws by the Declaration, a standing Army, the Exchequer stopped up, and a War without advice of Parliament, and the Triple League broken, and a league with *France* made; and, if you give no more money, you will have no more desperate Councils; for these were upon your giving money; therefore now would give none.

Mr *Sawyer.*] When we gave formerly, our judgments governed our wills. As for the desperate Counsellors, they were those who were protected by your pardons. Some were laid aside, and some are laid in the dust. Shall we say, desperate Counsellors contracted these debts? And shall we leave things desperate? Now, whether the King, by his good husbandry, can pay off these debts?

If the Government be not maintained, it must drop, one time or another. Would farther enquire, whether possibly there is a way to take these Anticipations off. Would have these matters first inspected, before the Question.

Sir William Coventry.] Will apply himself singly to matters of Anticipation. This is the first time any thing has been asked for this matter. The last time we met, it was not big enough for an aid. It must be nursed up to be big enough to be paid; but 'tis free for us all to speak here. He can never concur, that this debt, contracted by a war, against the opinion of this House, should be preferred before that which Widows and Orphans call for. We passed once Assignments, especially to pay debts; and were there nothing but this in it, can never prefer this of Anticipations, 'till the House think themselves rich enough. These men that lent upon the Customs, &c. had warning enough, by the Bankers precaution, and let them take it, in God's name. This has had the provision of the House already, but 'tis diverted and gone. Remembers what Clifford said; "You shall have a fleet; you shall have no more of debts." Nothing was said then, that the Revenue was not able to bear the charge of the Government—But 'twas improper to call for the account; and had it been proper for you, it would have been brought, and they would have been armed for it, over and over. There is something mentioned, as to the peace abroad (God preserve our own!) which would be the greatest misfortune that could befall us. 'Tis happy for us, that they abroad spend their strength upon one another, if it be so great as is said. But this should not make him give up the game—Believes that our neighbours are not so stupid as to give France leave to over-run us. But when we compare kingdom with kingdom, and nation with nation, they have no bowels, and are to have no bowels. Friendship has failed, and always will fail—and it is not the interest of Holland to let France be master of England. France, who has long made love to Flanders, comes only to see Dunkirk, and to fortify it. That King sees that the Dutch have

have a great fleet, and, believes, not to defend the Hague—But then 'tis the interest of *Holland* to support *Flanders*—Says *France*, “*England* is engaged, I will break the Triple League;” and for this they have hazarded their all. This digression is only to show you, that, if peace was made, we need not give up the game; and the rest of the Princes would think it their interest to hinder such an accession as *England* to the Crown of *France*. But this business of Anticipations seems to have influence on that very thing—If apprehensions that the Confederates are weak, it may induce a peace. What we do here can be no secret; they know our Votes, and see we incline more to them than the *French*; but the Confederates apprehend the King’s Ministers more inclined to the *French*. Does *England* judge amiss of this? The Confederates will so; they hear the King is clearing his revenue, and we fear he will declare against us, having more men, in the armies against us, than for us. Therefore he is against taking off the Anticipations by a Supply.

Sir John Duncombe.] Proffers a state of the expences, and the incomes of the revenue.—*But they would not be received.*

Col. Birch.] Whenever the House has been upon matters of money, he has been thought to be too forward. It may be, he thinks so too. Could never have believed to have heard that these Anticipations have risen from a war, which this House had no opinion of. Not only without the consent of the House begun at first, but even against the opinion of our ancestors. We are now not only out of the Triple League, but out of all league. In one Session, Thanks were given to the King for this League; and, in another, we were to give Money to pay for the breaking it. If ninety of a hundred, nay, ninety-nine, should hear him say, that, to pay these Anticipations, is for the interest of the country (and he is acquainted in three or four counties) they would call him he knows not what. Therefore is against Supply, &c. (Reflecting upon what Sir Richard Temple had said

about the willingness of his country, and the people in general, to give upon this occasion.)

Mr Vaughan.] When you have passed your Vote, the Counsel will prove good Counsel, and the War a good War. When so many millions have been given, he lies in amazement how money can be called for—And now that we are forced to pay Subsidies, at our doors, to poor families ruined by the Exchequer, stands in amazement at the motion.

Sir Thomas Meres.] Will not say, at the rate of vain expences, how to make the Revenue good, notwithstanding the payment of these Anticipations, but believes it may be done.

Sir Edward Dering.] Takes the Anticipations, at least, to be 700,000*l.* and yet finds we are going into a Vote against taking them off. Is of opinion there were dangerous Counsels; he never stood up to defend any of them, nor ever will. Those Counsels and Counsellors are laid aside. As for danger of Popery, the Protestant Religion was never more protected. Let us shut our hands 'till we open our eyes. A voluntary engagement of the Revenue may be justifiable; the officers will subject the Revenue to enquiry. Would have the paper that Duncombe offered, received; and adjourn the farther Debate to Thursday.

Sir Tho. Littleton.] We are not told how much of these Anticipations is for service to come, or what is already paid; so believes it not such a bug-bear as 'tis represented. As for the great stop of the Exchequer, though done in time of war, no reason why in time of peace. Now the continuation is without Privy Seal, or Order of the Privy Council; though formerly 'twas otherwise. As for Popery, there was a Proclamation, but sees not that matter at all mended. At this time, few men doubt the intention to make peace, to fetch off the French with flying colours, and to dissolve the present Confederacy. These are the present Counsels, and if they be desperate, would not make the last Counsels worse than the first.

The

The Question, Whether the Anticipations should be taken off, passed in the Negative, 172 to 165; [which was agreed to by the House *.]

Wednesday, October 20.

In a Grand Committee of Religion. Sir *Charles Harbord* in the Chair.

Col. *Birch* complained of several books printed, containing prophaneness, &c.

Sir *Philip Warwick.*] Pulpits speak to grave men, but the playhouses to young men. Would have them considered, as likewise erecting churches in the new buildings.

It was moved by Sir *Thomas Littleton*, and seconded by Mr *Powle*, that a Bill be brought in for educating the children of the Royal Family in the Religion established by law, and that no *Romish* Priest may have access to them.

Sir *Thomas Meres.*] Would have no part of Religion changed, but by Act of Parliament—Something of yesterday's Debate makes him a little jealous—Religion being from the primitive times, but “confirmed by Law,” the *Brachium Seculare*, would have it “established” by Law, that the thing of dispensing may never be again without Law.

Mr *Sawyer.*] The motion is but for a declaratory Law, as the Petition of Right, the thing being established by the Statute of *Hen. VIII.*

Mr *Sacheverell.*] Would not have it so done, as not to declare that 'tis your right now.

Sir *Thomas Meres.*] Not one Lawyer of the House could say, that the Declaration was Law, when debated here in the House; therefore would have this declaratory Law, to quiet our minds.

Mr *Vaughan.*] Would have it declaratory backwards, that no such Law was ever dispensible.

* In comparison with the lavishness and extravagances of later times, these things have all the air of patriotism and public spirit; but if Mr *North* *, and all the other writers on the side of the Preroga-

tive, deserve any credit, we are to conclude, that this excess of economy did not arise from any tenderness to the public, but a settled resolution to distress the King. *Ralph.*

* See his *Examen*, p. 458-9.

Sir Charles Harbord left the Chair ; and information was given the House, that Lord Cavendish had caused a Paper to be posted up at Whitehall-Gate, and Westminster-hall, by his footman, to this effect, " That Thomas Howard, who subscribed the Letter, was a coward." — 'Twas said, that the occasion of this was from some reports that Lord Cavendish had heard, that Mr Howard should say, " That his Lordship knew of the Letter some time before the Parliament met, and did not call Mr Howard to an account for it."

Mr Sacheverell complained on Lord Cavendish's behalf, but the Compiler could not well hear him.

Mr Secretary Williamson gave this account—He was commanded by the King to cause the Earl Marshal to enquire into the business. Mr Frowde, son to Sir Philip Frowde, was said to have taken down the said posted-up Paper, who was not to be found. He came to him, and he asked him, whether he had any quarrel with Lord Cavendish? He confessed the taking down the Paper, but denied the words he should say of Lord Cavendish, &c.—Then Williamson told him, he was commanded by the King, not to farther engage Lord Cavendish. Frowde said, " he had no quarrel with Lord Cavendish, and what he did was out of respect to him."

Sir Thomas Lee.] If this gentleman had no quarrel with Lord Cavendish, perhaps that Lord may have with him. In this kind of paper-war, he fears family quarrels ; therefore would have some gentlemen propose a way to extricate you out of the thing.

Mr Swynfin.] The honour of the House is to be preferred before any particular Member—When quarrels may arise from persons to families, knows no way to prevent it, but by laying hands on them both. In the mean time, would have an engagement of no farther proceeding in the matter from this noble Lord.

Mr Vaughan.] In this case, 'tis regular to send to the Lord Keeper, to take security of them both for quiet deportment.

Mr Garroway.] You have declared the Paper to be scandalous, and fears it a little too hasty to put the thing to another way of decision—He knows not what it may farther come to. Moves, therefore, that, though you have

have appointed a day for Mr *Howard's* appearance, it may be a shorter day—lest it should reflect, in consequence, on every individual man in the House, and the whole House. If any gentleman can, let him find out a more tender way, as sending for them both to compound the business; and be both under your care, till it be done.

Mr *Stockdale.*] Moves to recommend it specially to the King, that he would please to quiet the matter.

Sir *Charles Harbord.*] Thinks that what *Frowde* did was a very safe thing, and he not to blame. Believes that no man dares attack a Member—*Frowde* has engaged, and *Howard* also, who will be here to-morrow. If you will have him come, he will, though he should die at the door.

The Speaker.] All will bear him witness how tender he is of the honour of the house. The best way to secure your Members is, not to suffer them to do injuries; and he must acquaint you with what he knows. He knows that Lord *Cavendish* posted Mr *Howard* for a coward.

Col *Birch.*] By how much the more Lord *Cavendish* is esteemed here, you cannot do a better thing than showing justice. To come rightly to the bottom, the House must know what the Paper contains. Do right within doors, and you will stop wrong the better without doors.

Sir *Philip Warwick.*] Notwithstanding his great respect to Lord *Cavendish*, yet would not have you adjourn, till some Order be taken in it.

Mr *Devereux.**] Gave an account of the Paper.

Mr *Cheney.*] Would confine Lord *Cavendish*, in the mean time.

Mr *Bertue.*] Would send for *Frowde*, to see the Paper, and then would know whether Lord *Cavendish* owns it, before you proceed; as you did with Mr *Howard*.

Mr *Stockdale.*] Perhaps neither *Howard* nor *Cavendish* owns the Papers.

Mr *Swynfin.*] 'Tis as plain as any thing can be; you need not put the Question to Lord *Cavendish*; but the

* Third son of Lord Viscount *Hereford.*

matter is, what you should do for your own honour to prevent quarrels. When this was first started about *Howard*, heard it then said, "that whatever seemed to provoke quarrels must be set down." Your meaning was, that Lord *Cavendish* should no farther proceed—Knows not what provocation Lord *Cavendish* has had since—Knows not the laws of quarrels, as were told you yesterday (by *Wheeler*). You may take such an engagement from Lord *Cavendish* as may amount to a confinement.

Sir Thomas Lee.] Confesses that he believes Lord *Cavendish* has, in some measure, broken your Privileges, and would have the Serjeant take him into custody; neither will it be by that remedied, but by an Address to the King, after you have done your part, by confinement of your Member.

Col. Birch.] Is of opinion that Lord *Cavendish* has done a great fault, being enjoined by the House to do nothing of tendency to farther quarrel—Unless better reasons be given for this Paper than he hears already, would have Lord *Cavendish* committed.

Sir Edward Baynton.] Lord *Cavendish* has been here, and has heard the Debate. Would have the Speaker ask him, whether he has any thing to say to it, and then withdraw.

Mr Garroway.] Would preserve your Privilege to the los of his hand. Would have it understood that this commitment is not in order to Lord *Cavendish*'s coming to the Bar on his knees.

Mr Powle.] The commitment of your Member is not for his confinement, but security, therefore would have him confined till farther Order.

Mr Vaughan.] Commitment is not for his security, but punishment.

Mr Garroway.] His commitment then must be solely for breach of Privilege, and on no other account.

Mr Boscawen.] You may proceed without asking Lord *Cavendish*, whether he has any thing to say. He may possibly say something to his own prejudice.

Col.

Col. *Titus.*] Any man that knows his conversation, knows his obligations to Lord *Cavendish's* family. He believes if Lord *Cavendish* had any thing to say, he would have done it before now, being present at the Debate. Having said nothing in his own justification, and having proceeded in what he did after your Order, therefore would have him committed.

Sir *Thomas Lee.*] The foundations of the House you are not masters of, to dispense with, as reading of a Bill three times. You must ask Lord *Cavendish*, what he has to say for himself.

Mr *Garraway.*] He is not obliged to make any answer, if you ask him—But, in voting him to commitment, without asking him, you take away the greatest liberty you have.

Sir *Robert Carr.*] Since Lord *Cavendish* has been present at the Debate, you have broken your Order, as much as you can already; therefore would not ask him any Questions.

Mr *Sawyer.*] In all this Debate, you are upon matter of enquiry only, and then the Member may be present to give you information of fact, but when you give an opinion, he must withdraw. Some Members have told you of a Paper, but none that Lord *Cavendish* wrote it.

Sir *John Ernly.*] Your Member is at liberty to answer, or not. Possibly his answer may be as much as his life may be worth.

The Speaker then said to Lord *Cavendish.*] The House has been informed that you have broken the Privilege of the House, and would know what you have to say before you withdraw.

Lord *Cavendish.*] He shall ever have great respect to the Privilege of this House, and shall be satisfied with what the House shall determine concerning him. *And withdrew.*

Col. *Bircb.*] If any man has any thing to say, why this Lord should not be secured, let him speak; and, in the next place, Where? He moves for the Tower.

Mr

Mr Garroway.] In *Howard's* case you sent to him, to know whether he owned the paper, or no; who returned you a dissatisfactory answer; in the mean time, you obliged this Lord not to proceed in the business. You are informed that he has set up a Paper; you have asked him what he has to say; he has given you no answer; therefore for that would send him to the Tower.

Mr Sawyer.] Sir *John Fagg* was sent to the Tower, for proceeding in the Lords House, after this House had possessed themselves of his business*. And for Lord *Cavendish* to proceed, whilst the matter was depending in this House, is a breach of Privilege.

Sir Eliab Harvey.] Lord *Cavendish* has not broken promise, for that lasted not till *Monday*, but the matter being under the House's cognizance is the thing.

Sir Tho. Meres.] Breach of "Order" is of large sense in Privilege, but it is a less word than breach of "Privilege," and would have it run so in the Commitment.

Mr Sacheverell.] Would have the Commitment "for being charged with the Paper, and giving the House no satisfactory answer."

The Order was read, *viz.* That Lord *Cavendish* and Sir *Thomas Meres* be enjoined not to prosecute any quarrel against Mr *Howard*, or to send, or accept, any challenge in order thereto, without acquainting the House.

Col. Titus.] Lord *Cavendish*, in having said nothing for himself, satisfies him, that he put up the Paper, and in that he has broken the Order of the House, and for that would have him committed to the Tower.

Ordered, That Lord *Cavendish* be sent to the Tower, for his breach of the Privilege [of this House] in prosecuting a quarrel against Mr *Howard*, whilst the matter was depending before the House; and that the Speaker do issue out his Warrant to the Serjeant to convey Lord *Cavendish* to the Tower, and deliver him to the Lieutenant, there to remain till farther orders.

* See p. 226.

Thursday,

Thursday, October 21.

The Bill for appropriating the Customs [to the use of the Navy was read the second time.]

Sir *John Duncombe.*] One half of the Revenues is engaged; the Excise anticipated, and becomes useless to the Crown—It may so fall out that the new Duty may expire, and what will the Crown subsist upon, if you appropriate the Customs? Though it be a good Act you are doing, hopes you will find out some way to put the Crown at more ease, before you pass this Bill.

Sir *Thomas Littleton.*] This appropriates 400,000*l. per ann.* 150,000*l.* of it is little anticipated, and free, for the King “to buy Bread” as is said, and whether that will not do any extraordinary occasion, he leaves any man to judge. The rest of the Revenue will be sufficient for guards and garrisons.

Sir *Charles Wheeler.*] Is as much as any man for appropriating tonnage and poundage to the use of the Navy, but whenever the King shall do it, 'tis a great grace and favour. When the King departs from any of his trust for our safety, 'tis a great consideration—We trust the King with Peace and War, and when he advises with us, he parts with his Prerogative. Therefore would consider what will support the Crown with the rest of the Revenue. As the King does this for our consideration, so would have us do for him what shall preserve him.

Sir *Thomas Meres.*] As for necessity, you know who creates it. A million, or two millions, the same argument, “for necessity.” Though we may bear other necessities, without this appropriating the Customs to the use of the Navy, the necessity of the Navy cannot be borne.

Sir *John Knight.*] Instead of giving the King, you take away from him by this Bill, for the Navy requires sometimes a great sum, and sometimes a less, as War and Peace happen to be. And you do by this Bill appropriate in all times alike. One said “that the expenses of the Government are greater than the Nation can bear”

bear"—Those great salaries, given to several Commissioners, are a great charge, and would have them stopped.

Sir Eliab Harvey.] The debt upon the Customs advanced but 350,000*l.* which will wear out.

Sir Thomas Clarges.] Knight complains of "excessive salaries;" he knows nothing of it, and can say little of it, but since we see such malversations in the Customs, and all put upon the King, we ought not to endure that. We are told of 1,300,000*l.* Revenue in the Treasurer's account, and some say more—if that be so, there's 900,000*l.* to spare for the King's expences. We know that all the world arm at sea more than heretofore—When to morrow we come to enquire into the Fleet, hopes we shall find the government better provided, than in the anticipations of the Revenue. They have told us they can do it, and will do it, but 'tis not done. Moves that the Bill be committed.

Sir William Coventry.] Knows not why we should look into accounts. Is sorry the King has told you so much of "not so good Husbandry as might have been"—Therefore would not meddle with accounts.

Mr Powle.] The accounts were justly refused yesterday, because offered to divert the Debate. 'Tis objected "that the King wants bread"—Then appropriate another part of the Revenue to the Household, which expence, he believes, has not exceeded 150,000*l. per ann.* But it seems a prodigy to him, that having no war, and such a Revenue, there should be such debts. In H. VII. and H. VIII.'s time there were more Acts of appropriations made, than in any King's reign, and the prerogative then at the highest. But great part of the Revenue now runs beside the true channel, in pensions, and petty farms. If there be any other unnecessary expences, as of guards and garrisons, this House never countenanced them, and he hopes never will. They may be retrenched.

Sir John Duncombe.] Appeals whether, when anticipations were debated, he did not first offer his accounts.

He would have brought the accounts to be fully and fairly examined.

Sir *Thomas Lee.*] The cause of refusal of *Duncombe's* papers was, not to unravel all to lose time—Ever thought that giving the King more than the nation could bear, would ruin the nation. Has often taken the King's revenue to be 1,200,000*l.* and to make over measure 100,000*l.* 'Tis said, in pensions, 150,000*l.* Every Land-Tax you give, at this rate, will be called a Revenue, and you must continue it. You had not been troubled with this Bill now, but for the King's asking you money, the last Session, for Ships, the kingdom being in danger, and a thing not to be deferred. This Bill is therefore necessary, that you be not always asked for money to defend yourselves, having given this money (the Customs) for this purpose. And sees no danger the King should "want bread" as is told you. We are told "that there's always spent yearly, upon the Navy, 400,000*l.*" and yet here is no Navy. Therefore we would but appropriate what they may say is spent yearly upon the Navy already.

Sir *John Ernly.*] He is unfit to speak against appropriations to the Navy, being a Commissioner of the Navy. But fears that if the King be put to necessity—You take away what is not anticipated, and leave the King to live upon what is anticipated—The King may "want bread" as the Navy biscuit.

Col. *Birch.*] This is but doing what the King most delights in, next "his bread," and what you do by this Bill, is but in plainer *English* than before, when you granted the Customs for the Navy, and guard of the seas. 'Tis but letting the pensions stay, which they ought to do, and may well be. He asserts that four pounds a head, *per* month, will do the business of the Navy, Ordnance and all, and that it has cost the King seven pounds a head.

The Speaker.] Asserting, that when he declares, it ought to be abided by,

Sir *Tbo. Lee.*] Said there is no infallibility in your chair.

Sir

Sir Thomas Meres.] Has observed, in former Speakers time, that, upon errors, they have retracted and mended; has not known this Speaker do so.

Mr Garroway.] If you declare a thing positively, and it must be abided by, you may give a Question as you please; the Yea's and No's are at your disposal. The Orders, the House are judges of, and you put the Question only, Yea, or No.

Sir William Coventry.] Submits to any gentleman in the Orders of the House. Remembers it frequently, in the Lord Chief Baron *Turner's* time, (when Speaker) debated, who must go out, upon division of the House, the Yeas or the No's, and whether the Speaker is in the right, or not. 'Tis necessary that all doubts must be determined, but the Authority of deciding them is not lodged in any one man, but the House only, and no Authority is left in the Speaker. If a Debate arises, who must go out, and the Speaker sees the sense of the House against what he has declared, supposes such a modesty in him, and disposition as to pay deference to it. Has heard say, that going out is a disadvantage, but will not say the reason generally given for it. Some imagine five or six difference in the number; you decide it, and the Vote is registered, and we complain to you, and are not like to have redress. We may give Millions by it. Is very unwilling to see you, Mr Speaker, in the wrong, when we may pay so dear for it.

The Bill was ordered to be committed.

A Bill was read [the second time] to prevent the levying of any Tax, Tillage, or Subsidy, but by Parliament*. It enacts, "that the Subject is not compelled to any such charge, but by Parliament, and in no other manner, nor for longer time. Goods imported or exported not declared, illegal,—void and of no effect—Lawful to refuse any such Duty—Not to be summoned by the Privy Council for so refusing. And if by any Order such money is levied, for any end whatsoever, and being thereof legally convicted, judged guilty of High Treason. If imprison

* Called in the Journal, "A Bill o prevent the illegal Exaction of Money from the subject."

or compel, guilty of High Treason. The Act to be publickly read at the Sessions and Assizes once a Year, and recorded in the King's Bench and Court of Exchequer."

Serjeant *Maynard.*] Likes not these great penalties of Treason. Many laws of that kind have not had so good execution when penalties are so high.—Would have some other penalty than that of Treason.

Sir *John Duncombe.*] "May refuse and withstand"—Whether may he defend himself, as if one came to rob him?—"May call the assistance of the Sheriff"—Consider whether 'tis not a great inconvenience to give such a power. Thinks the laws already strong enough—Would have the Committee consider of them.

Mr *Vaughan.*] Since the stop of the Exchequer, where a man has as much right to make use of his money, and call for it, 'tis no wonder, after so high a violation of property, that such a penalty is put into this Bill—Would commit it.

Mr *Finch.*] No point of our liberty is dearer to us than that of our money; with it we lose our liberty—Inconveniences in relation to the assessment of it—"The person guilty of Treason." The consequence is plain; you appoint Seffors for the money you give here; if they levy sixpence more then by Act, they are guilty of High Treason. Next, he knows not how usual it has been to call the Sheriff; which is, in effect, levying of War—Would alter the crime. 'Tis very grievous to make the penalty of High Treason extend not only to the persons offending, but to their innocent posterity. Lord *Coke* advises Parliaments, "That if they enact a new felony, it should not extend to corruption of blood." Has heard more instances of the King's mercy, than of any since the foundation of the Government. Estates have formerly made men criminal. If *the fathers have eaten sour grapes*, let not *the childrens teeth be set on edge*. Clipping of money, and refusing the Oath of Supremacy—Excepts all manner of forfeitures, as well real

as personal, by the party offending. Would have the penalty altered.

Sir *Harbottle Grimstone*, Master of the *Rolls*.] None are so little read that know not this of raising money, without law, to be our right already—Laws have produced an equal balance between Sovereignty and Oppression, but what has been done may be done again—Has heard some speak of free giving, but have not provided for well disposing of it. This that is to be our great security, (our Ships) was the most malicious Counsel ever given by man (he hopes by no Englishman; they might have sent to your house, or my house, as well as the bankers.) Such invitations and proclamations to bring money into the Exchequer. We are but the peoples Trustees—The Bill may be thought out of the road—But for the punishment, would have no man plead ignorance upon great breach of laws. Pray God you be never put to it!—They do the King best service, that resist and oppose these impositions. Sometimes penalties are not proportionable to crimes, but knows not a penalty proportionable to this offence. What is the difference betwixt breach of property, and slavery? Would have the Bill committed.

Mr *Garroway*.] Was it ever known that you may not defend your own houses, and castles, from violation? In all the world this is the fashion, and hopes that we shall not innovate here. If you may not hinder a few men from coming to levy money, they will gather more, and be too hard for the county magistrate, called to your assistance. If yet there be any scruple, the Bill may go to a Committee to be mended. There is no snare laid for any man in the Bill; 'tis a protection to all we have. The penalty, being to meet with great persons, cannot be too big.

Sir *Job Charlton*.] Is glad to hear that no man opposes the Bill. You cannot provide too great penalties for men who maliciously do raise money. But as the Bill is penned, you will not get a sessor to raise the money you give. The Bill is for what is passed—For fire-hearts, there

there is a doubt amongst learned men, and would well consider it.

Mr Sawyer.] Takes the Bill to be but declaratory of the Common Law, and only for fencing and bounding that Law.—Would commit it.

Mr Sacheverell,] 'Tis not a bigger penalty than what is given in several laws of Queen Elizabeth. Agree that it is your right, and it cannot be bounded too hard. The forfeitures arising limited to the use of the King's Ships, and maintaining his forces. 'Tis fit that "the penalty, to an assessor, levying money, knowingly against law," should be in; but it will not touch him, because he has directions from the Commissioners.

The Bill was ordered to be committed.

Friday, October 22.

In a grand Committee on the building more ships. Sir Charles Harbord in the Chair.

Sir John Cotton.] Princes may be mistaken, Councils may err, but the King cannot do ill. Three things hinder supply. 1st, "The fear that what they give may be spent in luxury." The character now of a brave man is, that he eats well, which formerly was his courage and learning—From whence these misfortunes invade us. Anciently in *Rome*, it was reckoned how many cooks there were, and so it may be here! 2dly, Hindrance of supply "The fear that Popery should be brought in"—We see Papists placed in military employments. 3dly, "The fear of being governed, in an arbitrary way, by a standing army." But now he comes to the great point—Is really of opinion, that, at this time, we should give the King supply for the fleet. *Virgil* calls us in *scorn divisos orbe Britannos*. Our ships are our walls, to which the King has a natural affection, and more employs his mind on, than any of his predecessors.—Would have us give him something now. Moves for 500,000 l.

Sir Thomas Meres.] Wonders that, hand over head, before the matter be reafoned, you chop upon a sum—All the gentleman said, bating some few words at the last, was as worthily as can be. But we are always to give our Votes out of the result of reason—Will go as far as any man for what is fit. 'Tis said, forty ships are requisite—Offers then that we may see what this Navy wants—For “to the ships and navy” is the Order from the House, which you are bound strictly up to, and how to look any neighbour in the face. Courage is the gift of God, and his work, for the men—Would see what hulls of ships are wanting.

Mr Garroway.] The Debate, by Order, ought to be singly and solely upon account of building ships. Those we were so tender of before, our friends the *French*, are now become the object of our fears—Those now are for general peace, to make these fears the greater. What mischief the *French* can give us they will—But will not desert the King's Honour, nor the defence of his Country—Debate the reasons and proportions. When the money for ships shall so be declared, and so be applied, and no other way—Let's not say we get Votes upon one another—And hopes this naming of sums may be given over, but only after the Debate—This naming a sum will not fright us out of our wits; we may give or not give, for all that—He has been employed in the accounts of the Navy, where he found the *Rupert* given in, as full victualled and manned, two months before she was off the stocks. Hopes that things are now better managed, than heretofore. Would have the Commissioners of the Navy make a proposition, what the Navy wants, and what may supply it, and then debate it.

Sir Henry Puckering.] Moves that we may supply the King with thirty sail of ships of the several rates.

Mr Vaugban.] Ships are called for, before we are told for what use—You are put rather upon the money than the ships. Is willing to go freely to what shall be done, but to talk of the ships number, before we know

know what is wanting, is extravagant. Would first fairly see what ships are wanting, and then proceed.

Mr *Pepys.*] Is sorry that, at the beginning of the Debate, we should give suspicion of one another. He has none, and will give none. With all honesty and understanding, will give you what light he has in the Navy, and submit it to you. In *April* last, he told you, there were one hundred and fifty one ships, great and small; eight of the first rate, nine of the second rate, twenty one of the third rate, and thirty six of the fourth rate. The rest are attendants on the fleet. The last account he gave was, by way of comparison with our neighbours the *Dutch*; they had then forty four more ships than we, built by *France*.

Col. *Birch.*] He thinks the thing well opened, and with the least number—Thinks, the House will strain hard for *defence* of the King and Kingdom, when a necessity for it. Is glad that the House was offered the sum so low, that they could not hear it. (*Cotton speaking softly*) Time was when our neighbours the *French* were sent to, to build no more ships, or we would burn them—Hopes we may see that day again, but we shall sweat for it first. But 'tis not his errand to tell you what ships are most useful; he was never at those pushes at sea but once, and he thought it a mad one—But the nation can never be beaten at sea by the *Dutch*, but may be by the *French*. The *Dutch* must draw less water, by their building for their shallows, though they make it up in breadth—The *French* can, and so run better by the wind. The coasts of *France* are as deep as ours, and they build as well and as strong as we—But for money he has displeased many before, and fears he shall now—Would build as many ships in a year's time as can be, and now to mention no more than can be built in that time, not knowing where the clouds may break—And would have occasion to meet the King here once a year, till things be better settled—Would know how many ships may be built in a year—He cannot find that, in one year, above twenty or twenty

One ships can be built, if our all lay at stake. Desires that, if twenty ships shall be resolved, whether ten thousand pounds a piece would build these ships, one with another—Would know that first.

Mr Wood.] What first and second rate ships may cost a ton? Many second rates may be called first rates, stout and brave ships. The *London*, a brave ship, is 1200 and odd ton, which answers a second and third rate ship. He computes first and second rates at 14*l.* per ton; third rates at 12*l.* per ton—The sending twenty or thirty men of war for winter convoys does unprovide the summer service. When the ship is built, cables and sails cost as much more as the ship.

Sir Tho. Meres.] His calculation goes by number of guns, for rates may be uncertainly called. A ship of eighty guns and upwards, bears the great weight of the battle. Of these we have more than the *Dutch*; of forty guns and upwards, to go into that line, there they have more than we, about thirty in number—But what we have lately built, may difference the matter a little, two, or three. But though our men are better than theirs, yet forty of ours cannot fight eighty of theirs. Next, how many of this thirty spoken of, we shall provide for—We cannot, we are told, build above twenty in one year. Let us go to the twenty, and once a year, meet again, and then build more—*Wood* says, twenty are not to be done, but to be in two years, and as many provisions to be added as may be. For the purpose, if you will say 'tis the opinion of the Committee to provide money for twenty ships, first, second, and third rates, he is ready to give his Affirmative.

Sir Thomas Clarges.]—*Stroud* moved for forty ships, but he thinks thirty too many. Eighty five capital ships will make the best fleet in *Europe*. All the seamen in *France* are not 14,000. Strength of sea is to be reckoned by seamen. Has heard that we have 26,000 seamen, and some of them must be for traffic of the nation; and if you have eighty five capital ships, you have the greatest fleet in *Europe*. The charge of the Navy

is 80,000 *l. per ann.* if you set out but a cock boat. But if you build more ships, the charge is vast, at 20 *l. per ton*, all things belonging to them. The *London* cost 17,000 *l.* Would have the Question for twenty five ships, and you will be at least three years in building them.

Sir Richard Temple.] Would be informed what necessity of the number, and then consider what you will do. He has heard that twenty two ships may be built in one year.

Mr Garroway.] You are upon the number. He takes that measure given us of the King of France, and Holland, to be extravagant, and no rule to go by. Is not for the reason, that because they have them, therefore we must. If they have a thousand more ships than we, what will they do with them when they cannot be manned? Let them keep them to lie by the walls. The inconvenience is when we come in from fight, disabled, and have no recruits. Is sure we cannot want seamen, if trade be supported. The French are setting up fishing, and the East India trade, and they suffer you to bring no beaver skins. In time your plantations will be over run, and that trade will over run you in seamen. We have had unlucky success by giving too much for the fleet at a time; and we may give more, when we see the success of this. This will be an act of generosity and duty to the King. Has been informed that the timber is yet unfeelled for these ships. Shipwrights have wanted timber, and the prices will be enhanced, and if you will enhance all prices, the first undertaker of these ships will be undone. To day they tell you of 12 and 14 *l. per ton*; you must give such allowance that men may not break upon it. Therefore would have three years time for these ships—And so come to a Vote.

Mr Pepys.] The number of the workmen, and scarcity of places to build ships in, must be considered. In this he is much more desirous to learn than he finds persons capable to teach him. He offers no opinion, but mea-

sures only to go by. Will show, if to save, or not to save the Kingdom, what places you have to build in. They are either great docks, or slips, or launches, of which there are not so many for first and second rates, as thirds; in all, these are twenty seven. At *Chatbam*, *Deptford*, *Portsmouth*, and *Woolwich*, in all six. At *Portsmouth*, for third rate ships, three docks. One at *Blackwall*, and *Deptford* Pitch-house, in all fourteen. These are places fit for building—Submits to any man's exceptions—For workmen, 305 shipwrights to build one of each rate in a year. This is to make you judge, and him not confident to propose any thing. There are three things requisite to building ships; places, hands, and materials. Places are manifest, and hands no less; but he's to seek, for materials, what to say—'Tis not to be imagined that for so unforeseen a work as this, timber could be felled. In 1665, no man could have imagined that such a stock of timber should be felled for building the *London*. At home and abroad there is a dearth of plank—But hears it said, "Provide for twenty ships this year." He will not dislike nor propound the number. The first year, timber will be green, and would you have it always green? Therefore would provide all the timber presently. For what is said of the *London*, he has the builder's account given to the Lord Mayor. The sum is 12*l.* per ton, the total 14,000*l.* Believes it was made good, to the utmost of the contract—Submits to be informed any way besides. The *London* is not so well built a ship. The King has paid dear for building by contract—It has cost the King 1000*l.* on the *London*'s hull, in three months being abroad. There's no inspecting by any eye, where 'tis for the interest of the builder to build ill. For the number, he supposes you'll stick to the first proposed. On this consideration what's enough? No better way to consider the force of the enemy you are to oppose. From forty guns and upwards, the King has seventy, seven ships. *France* has ninety nine, which is twenty two difference. The *Dutch* have

one hundred and eight, which is thirty seven difference*. More light he will give you as occasion shall be, and you call for it.

Sir Eliab Harvey.] We have twenty seven docks, slips, and launches. Would know whether, if all these shall be employed, building merchant ships will not be stopped.

Mr Pepys.] Go to work as soon as you can, you may command every dock, before you can get materials. Then you may have hands. As to that of the merchants, they have not much work for ships of the first rate. Their craft is much of a lower work. The great trade is not carried on with that size. The number is upwards of what you have heard of, of workmen that may suffice to carry on the King's work—Would not have the Question proposed by Meres, to be exclusive to the materials,

Sir John Duncombe.] 'Tis the interest of the House to meet your neighbours with force of equal strength, as well as courage. The consequence of green timber will be money lost. As for things necessary, would have you enquire of them who can inform you.

Mr Wright, a Shipwright.] Should be as forward as any man for forty ships, but twenty are as many as can be built in three years time; and twenty well manned,

* Lord Shaftsbury, in one of his speeches made this year, and afterwards printed, has these expressions. "The French King is the most potent of us all at sea. He has built twenty four ships this last year, and has thirty more in number than we; besides the advantage that our ships are all out of order, and his so exquisitely provided for, that every thing has its particular storehouse. It is incredible the money he hath, and is bestowing of making of Harbours; he makes nature itself give way to the vastness of his expence; and after all this, shall a Prince so wise,

so intent upon his Affairs, be thought, to make all these preparations to sail over land, and fall on the back of Hungary, and batter the walls of Kamnitz?"

To set the contrast between those times, and the present, in a striking light, let it be remembered, that we have now in commission, from forty guns and upwards, above 130 ships, while so vigorous and successful have been our efforts that the French at this time (1761) have scarce thirty left, and such has been the supineness of the Dutch, that their once formidable fleets are now scarce heard of.

will be as many as are necessary to fight with all the world.

Sir Thomas Lee.] 'Tis dangerous, in his opinion, to go so far. Would have consideration had of what was done, when we gave 2,500,000*l.* You were told it was but a Vote of credit, to secure us from a war, but it so alarmed, that you frightened your neighbours into a war. What made the war with *Holland, Spain, and Germany?* *France* armed so much that he frightened his neighbours. As for *England*, 'twill be wondered you have been asleep so long. You build now twenty ships, and *France* will upon it build forty, and so you must build more than you are able. In such a time of peace as this, 'tis not a Vote of noise, but it will undo you. Therefore vote cautiously and wisely, not to frighten the world.

Sir Thomas Meres.] Will not provide here such a number of ships, as not to come here again. Would be here in a year and three quarters again.

Sir Wm Coventry.] It may be expected, because he has had some experience in the Navy, that he should give you some light; but has nothing singular to offer you, but what already has been. As for being equal with our neighbours—But since no body has showed it possible, that more than twenty ships can be built, without stops to repairs of ships we have already, or the merchants affairs, which, if it does, your ships will be useless; therefore 'tis no advantage to talk of a greater number—See this part well performed—Believes that our neighbours will build more, and we must still give more money to overtake them. It not appearing that any more can be built, would have an unanimous Vote, rather than say thirty are requisite, and you say you are not able to build twenty ships.

Sir Edward Baynton.] Hears several things in Debate. Ships and their value. Twenty named—Consider affairs represented of Christendom. The *French* and *Dutch* are at war by sea and land; the *Spaniards* revolting in *Italy*. Your intention will be looked upon by

by the number of your ships. All our end now in peace is but for our own defence. As soon as they have a new coach, we must not put away our old one. Would put the Question for twenty sail of ships.

Mr Waller.] Does not remember, in the *quantum*, but that the Chairman collects what is unanimous. *Rome* was not built in a day. Nor the Navy. Twenty ships in a day is very fair. If we are well used on land, we cannot fail at sea. *Babel* had not ceased building, but for the several languages. We love the King, and the honour of the nation, and 'tis for both to have an unanimous Vote. Put the Question for twenty ships.

Mr Powle.] Thinks that, by the revenue, as it is now, by good husbandry and management, all these ships might have been set out, without an aid. If admitted thirty ships, then whether you will vote them all at this time; for if so, there can be no visible occasion for this Parliament to meet again, in seven years. The prospect of the coming of a Parliament keeps things in order. Your last Acts have much kept out Popery, and is glad now of the occasion of this supply to have some good effects of this Session, and hopes to have so of another. The longest time and shortest sum is usually put first. Twenty ships is your first Question, because least charge to the Kingdom.

Sir John Duncombe.] Would not have the House led into an error, which many men may be. He takes the additional duty, and all the rest of the revenue to be 1,360,000*l.* per ann. Twenty ships are agreed on all sides. The rest lie upon the opinion of the House.

Sir Thomas Lee.] Rises, with some trouble, when he thinks that the revenue sinks, like our rents, which was agreed to be 1,100,000*l.* and with the addition to be so small, 'tis strange! Like cloth put into a tub of water, that shrinks the cloth, and diminishes the water too.

Mr Finch.] The first thing moved was sums in general, and then thirty ships. That was not thought enough, and then forty moved for. The reasons why but twenty ships were rather negative than positive. If

more

more than twenty be granted, then 'tis said no need of our meeting here again of a long time. Money is not the only reason of Parliaments assembling. Thinks 'tis fresh in memory that, in the last Session, not a penny was asked you, but only for settling Peace and the Kingdom, and for establishing a good understanding between the King and his people. But there's no danger that the Parliament should not meet soon; the King has great debts, and you voted him nothing—Heard affirmed upon veracity and the order, which assures him of the truth of it. The provocation of neighbours began on the other side. They built ships first. If every state be governed by their interest, hopes we shall be so. A strange reverse since Queen *Elizabeth's* time, when the French were sent to, to build no more ships, and now we speak only of a defensive war—But plainly less than thirty ships is not necessary for war. Suppose we could build but twenty ships, shall we not provide for more? What harm in stores for thirty? If thirty be necessary, at least, as all agree, provision for them, what haste of building them? Is it a time, now others grow great, to neglect our own Salvation? We at most give but part for the whole; to protect all we have.

Sir *Thomas Clarges.*] Wonders at the confusion of face spoken of a war. We have sixty ships of fifty five guns, and fifty of other rates, and, for necessity, the merchants. We have as good a fleet as ever, or any neighbours already; we have not need of thirty ships, twenty is a very great proportion; and the King's revenue 1,300,000*l. per ann.* will well build all these ships, and support the Government.

Col. *Birch.*] As some are abler than others, so some step faster than others; a man steps because he would not jump into sums, and run into numbers, that the reason of the thing should be debated. 'Tis a strange thing what was said, "That we give never a penny of this to the King." Strange thing! Though the King gets not by it, yet in such a habit of giving—Those gentlemen run to the highest—The thing he supposed

was

was what rationally might be built, and the old ones might be repaired, and the merchants business served. The highest number we can build is not above twenty two, employ all the ships and docks you can; and unless we encourage seamen, all is to no purpose—Wonders at the man that moved this, and that as said, when premised in the Debate. The reason of the thing is very much against so many in two years—And nothing but for argument that the money may be longer paying.—And would not have the world believe but twenty two ships in two years—Therefore would have the Question, that they be forthwith built.

Mr Secretary *Williamson.*] Would be glad to compromise this point, and the word “forthwith,” which will do no more.

Mr *Garroway.*] Moves for the word “convenient speed.” “Forthwith” has another implication. It may call for all the Money at once.

Resolved, That it is the opinion of the Committee, that twenty ships of the first, second, and third, rate, shall be built with all convenient speed, [which was agreed to by the House. To proceed on *Tuesday.*]

[Lord *Cavendish*, having sent a petition to the House, acknowledging his breach of Privilege, and craving pardon, was ordered to be discharged from his imprisonment in the *Tower.*]

Saturday, October 23.

Col. *Birch.*] Desired leave to bring in a Bill for free exportation of Coals paying a small duty.

The King's ships spend seamen; they make few, and no trade increases seamen like the Coal trade. All the Coal trade is carried out by our own people—Eighty-eight Chaldrons by strangers, at nine shillings the ton, custom—Nothing but want of vent makes coals neglected, and nothing makes coals dear, but want of vent—Then the pits break in, and the work cannot be carried on.

Sir *George Downing.*] Plantations, the Fishery, and Coal trade, are the three great nurseries of seamen. Vent for coal, without doubt, there is; for the wood of *France* is

is diminishing as fast as that of *England*. Eleven shillings per ton, that is eighteen shillings the chaldron, the duty, is as much worth as the commodity, and they in *Holland* would spend it, as well as in other parts. They are burning out their bowels there; the turf-Coal would vend there, were it not for the great imposition here.

[Leave was given to bring in a Bill accordingly.]

Debate on the King's subjects going into the *French* Service, [contrary to his Majesty's Proclamation.]

Mr Powle.] Thinks the Papists not considerable here, unless they had encouragement at home, or dependence on some foreign Prince. Fears a great naval strength, and a great Prince aspiring to the Western Monarchy, and a great protector of the Popish interest. When he has over run *Holland* and *Germany*, he may recoil back, and over run us. Therefore 'tis reasonable to look back upon what supplies have been given to support the Triple Alliance. We made an Address to the King the last Session, and had a gracious answer, and a Proclamation, but not the effect answered. Many are gone since into the *French* service, and that unfortunate gentleman, that has occasioned you so much trouble—(Col. *John Howard*.) There went many, you'll find, into the *French* service, after the Proclamation. Therefore would pass a Vote, “That all who shall go after a Proclamation, shall be declared contemners of the Royal Authority, and oppugners of the interest of the Kingdom, and betrayers of the Liberties and Privileges thereof.”

Sir Thomas Clarges.] Letters from all parts beyond sea tell us that the King of *France* sends for levies into all the King's dominions, to have them against next spring, in a body. Nothing visibly can sooner destroy us. They have a printed prophecy that the King of *France* shall be King of *England*. He has seen it in the *French* and *Holland* Gazettes. “From *England* prospects of peace.” It goes current, that *England* promotes these *French* counsels, though he hopes 'tis not so. But would have a Bill to prevent their going over.

Sir

Sir *Winston Churchill.*] He is that unfortunate man that had some sons * in the *French* service, but 'tis hard that such as go over to see such campaigns as never were before, 'tis hard that such young men should be proclaimed traytors for it. He'll send for his son home, and engage he shall never go there again.

Sir *Thomas Meres.*] If there be such a Bill, a time will be allowed for their return. The scythe of death has cut them off, as fast as they came. We have lost 5000 of them this last summer, and now as many more are going over. Would keep them to defend us here. Such has been their resolution that they have taken Victory out of the hands of the *Germans*.—They are brave fellows, and make the stand. But suppose there should be peace, as he fears, 'tis the interest of us to have these confederates oppose *France*. Shall we help *France*? The last time we met, a Bill might have been, as well as an Address. The second Address was not presented, by reason of the Prorogation.—Would have a Bill to reinforce the Proclamation with a penalty.

Mr *Williams.*] Moves for a Proclamation, to be in force of a law.

Mr *Vaughan.*] Thinks it a very charitable motion. For not only the foreign sword cuts them off, but our own wishes. The Proclamation is only on pain of the King's displeasure, and that they will adventure—Would have some special penalty.

* One of these, the eldest son who was first a Captain in the Duke of *Monmouth*'s regiment, and afterwards the famous Duke of *Marlborough*, gave in those wars early presages of his future greatness. In particular, at the siege of *Nimeguen*, in 1672, he so distinguished himself as to merit the notice of his general, Marshal *Turenne*, who bestowed on him the name of "the handsome Englishman." And at the Siege of *Maastricht*, in 1673, he took a Lunette, with only his own company of grenadiers, when the *French* and *Swiss* were retreating, for which he was thanked by the *French* King at the head of the line.

Charles, another of the sons, was also distinguished as a general officer in the reigns of King *William*, and Queen *Anne*, and in particular, in 1693, at the battle of *Landen*, he took his nephew, the Duke of *Berwick*, prisoner. He was afterwards made Governor of the Tower, of *Guernsey*, and of *Brussels*, &c.

Mr Mallet.] The *French* sword is guided by Anti-christ.

Sir William Coventry.] Upon Mallet's delivery of a form of a Vote to the Speaker—Whoever delivers the Speaker any Paper in the House, he ought to open it, before he delivers it, and if the gentleman observes that your memory fails, you may be so helped, (which your memory seldom requires.) Hears it said, “ ‘Tis hard to make young gentlemen criminal that cannot judge of the interest of the Nation.” ‘Tis therefore fit the Parliament should teach them and explain it. ‘Tis the worst employment the King’s Subjects can have, that next to rebellion against their own Prince, to be put to spend their lives in the *French* service. Thus far ‘tis clear, that ‘tis unfit those should be there that are there, and that others should go. You are told, “ That the King’s Proclamation singly can do no good.” Shall we not then strengthen it with all in our power? In the Dutch war, we gave the King power to declare those Traytors that remained in the service after such a time. By this way we shall have more fruit of the Proclamation than we had before.

Sir John Hanmer.] If you withdraw these forces from France, you give the *French* encouragement to make peace. Having these men there, you keep up the balance.

Sir Nicholas Carew.] If you call them at any time home, [let it be] now. If the *French* King is not seeking for peace, he thinks somebody is doing it for him. If he might, in the peace, give up all he has taken, it would be something; but he fears that will not be.

Resolved, 1. That ‘tis the opinion of the Committee, that all the forces that are, or shall be, in the service of the *French* King, contrary to his Majesty’s late Proclamation, shall be taken to be contemners of his Majesty’s Royal Authority, and opposers of the interest of their Country.—[2. That the Lords concurrence be desired to this Vote]—3. That a Bill be brought in to enforce the Proclamation with penalties.

Monday,

Monday, October 25.

Mr Howe.] Complains, that whilst we are about the Nation's business, we should be subjected to challenges. He hears that Lord *Cavendish* has been challenged.

Mr Russel.] Gives an account of his suspicion of some such thing, by Mr *Francis Newport*'s * coming to Lord *Cavendish*'s House, on Sunday morning last; which occasioned him to find out Lord *Cavendish*, and not to leave him till he had acquainted the Duke of *Ormond* with it, who told the King of it, and Mr *Newport* was secured.

Sir John Coventry.] It seems, there is great encouragement from great persons to affront this Lord. The quarrel is not against Lord *Cavendish*, but the whole House. Some course must be taken, or we shall be hectored by every life-guard-man, and be obliged to fight him. Is informed that a lawyer of the *Temple* should say, " 'Tis a pretty story this of Lord *Cavendish*, and Mr *Howard*; the Lord had the Paper three weeks before the sitting of the Parliament, and complained only at the opening of the Parliament, to hinder the King's business." (*And named him,*) Mr *Sawyer*, of this House, who said it, in a Coffee house, to Sir *Thomas Eastcourt*, a Member, in the hearing of one Mr *Bradbury*, a lawyer, and *Philips*, a stationer near *Temple Bar*.

Mr Sawyer.] Finds that he is the person that, you are informed, should have said something of Lord *Cavendish*. He was asked by Lord *Cavendish* about it, and told him he said no such words.—But some accidental discourse, he said, was rumoured about town, that the Paper was abroad a month before the Parliament sat—But he never said the words alleged. But will tell you something—Since that, some persons have been abroad, to enquire and raise an accusation against him. (Would be glad to hear it said) As for that "of hindering the

* Third son of *Francis Lord Viscount Newport*, Lord Treasurer of the Household, and afterwards Earl of Bradford. Mr *Howard* married Mr *Newport*'s sister.

King's business," he never said it; nor could it be the consequence of any thing he said.

Sir Philip Harcourt*.] Desires that Mr Bradbury may be summoned, to hear what he can say.

Sir Thomas Lee.] Would not have you enquire into Coffee-house discourse. Your Member plainly denies it, and you can have no advantage by farther enquiry. But if any such thing as a challenge be, 'tis fit for your enquiry, and the person that did it should be made a severe example of. The King and you have made enquiry, and any body that dares to concern himself is worthy your farther enquiry. Yourselves are more concerned than Lord Cavendish, and would have severe enquiry into it.

The Speaker.] Has not yet heard that the House has been informed that there was a challenge. Mr Russel only told you of the presumption of a quarrel.

Lord Cavendish.] Mr Newport was with him on Sunday morning, but cannot say he brought him a challenge.

Mr Howe.] The King sent to secure Mr Newport, and no question but there was a challenge.

Mr Hale.] Lord Cavendish is not forward, nor willing, to tell you of a challenge. His own inclination possibly may induce him that way.

The Speaker.] Would have it referred to the Committee of Privileges.

Sir Richard Temple.] 'Tis hard to put it upon Lord Cavendish, whether he had a challenge sent him, or not.

Sir Thomas Littleton.] Moves that, by reason Mr Howard is to be here to morrow, you would have Mr Newport here also.

Sir Nicholas Carew.] Is not for delays. More challenges may be sent us at this rate.

Sir Scroope Howe.] Would have Mr Atkins sent for also, who is concerned in the challenge.

Sir Nicholas Carew, upon Col. Egerton's saying "he was no papist," Mr Mallet coupling papists and life guard-men together, said] Atkins, though no papist, may be a friend to papists.

* Father of Lord Chancellor Harcourt, and great Grandfather to the present Earl. He died in 1688.

Mr Powle.] Sees no other way you can take, but sending for these persons.

Ordered, That Mr Newport and Mr Atkins be summoned forthwith to attend the House.

Col. Birch.] Calling anything in question that the House has done, is calling the Honour and Dignity of the House in question. When the House punished Lord Cavendish— And any man to question what you have done, is high presumption, and would consider it.

Sir Thomas Lee.] Expected that Birch would have concluded his premises, with some remedy for these things— Desires he would tell you.

Col. Birch.] Though some body else is more fit for it than he, yet he shall move, “That whoever shall call in question what this House does, shall be punished as disturbers of the peace of the Nation, and Privilege of Parliament.”

Mr Garraway.] The laws already are severe, and he would be upon even terms with such kind of men as life-guard-men, that if we defend ourselves against such as have no estates, we may not forfeit ours that have.

Sir Thomas Clarges.] As 'tis proposed, 'tis too general. Lord Cavendish having done something in breach of Privilege of this House, and been punished for it, we ought to do equally with the rest. We are trustees for the people of *England*; their honour and fortune are in our hands; and for persons to undertake to censure us, would have their punishment more particular.

Mr Waller.] They that will fight against King, Lords, and Commons, (against law) will fight with any of us. In *France* there are edicts against duels, but that will stand with arbitrary government only. Would have a Committee named to prevent this present mischief.

Mr Swynfin.] What the Speaker repeated was not to the Question proposed. 'Tis a vain thing to put a Question, that any man without doors shall not speak against what we do. 'Tis out of Question. No man doubts it. But what you are to do in the matter be-

fore you, betwixt Lord *Cavendish* and Mr *Howard*, to prevent farther quarrels, in this business, highly reflective upon the House. As yet you have had no answer from Mr *Howard*, and in the interval you hear every day of challenges. You are to do all you can to put a stop to these things. The House having the matter under consideration, would have you vote, "That who-soever shall prosecute any thing in this matter, shall be declared a violator of the Privileges of this House."

Col. Birch.] Would have something like this, "That forasmuch as the House have thought fit, &c. for any man to take notice, &c. is an arraigning of your justice."

Mr Williams.] Stat. of H. IV. There being an assault made upon a Member, 'tis necessary that some provision should be made against promotion of such assaults. Sees no law more for Members than other men. In such provocations as these, would have one.

Some Members retired to draw up an Order according to the Debate, which was posted up at *Westminster Hall* gate, and the Inns of Court.

Sir Thomas Lee.] Would have a declaration, and resolution, "That not any pardon should be granted, &c. nor the persons offending should come into the King's presence." The honour of his presence would make men put their honour into the King's hand, to do them right.

Mr Williams.] Proposes, that if any person fight a duel, he be reckoned incapable of pardon.

Sir William Coventry.] A gentleman said, "That the King had taken notice of it, and the persons were under confinement." Finds Lord *Cavendish* here—Would know what engagement he has made to the King.

Mr Howe.] The message from the King to Lord *Cavendish* was, "That he should not send nor receive any challenge from Mr *Howard*, nor any man else."

Sir William Coventry.] If this came from the King, believes it will not fail of its success. What he rises for, was

was to prevent what he hopes is prevented, and if so, the King to have thanks from you for his care of our Member, and to implore his farther protection.

Sir Richard Temple.] The great occasion of duels is, that the law gives not remedy proportionable to injuries received. In France a strict course is taken to repair men in their honour, wherein the law is defective; as 'tis in some things men highly esteem, as affrontive words.

[Ordered, That a Bill be brought in to prevent duels, and provocations to duels.]

In a Grand Committee on the state of the Kingdom. Sir John Trevor in the Chair.

Sir Thomas Meres.] Would have you consider the impiety and corruption of manners, and the protestant religion established by law. Next, rents falling. This is not new matter, but records extant; 'tis a parliamentary way. The poverty of the Nation, and how to increase its riches, is always one head, in considering the state of the Nation—Prevent a consumption and general fears of the Nation—Wounds are not to be cured without being searched—if they are skinned over only, and not searched, they break out into blotches and boils. God give a blessing to what you are about!

Sir Harbottle Grimstone] Knows not how he shall please other men, but would have one ingredient—An application to the King to set a period to this Parliament, and to allow us some time to pass Bills now on the anvil, for the good of the Nation. But would not bound the King. He has had experience of this mischief—There is as great mischief in the length of this Parliament, as if there were no Parliament. A standing Parliament is as inconvenient as a standing Army. We are not afraid of the latter—Would address the King, &c.

Sir John Birkenhead.] God Almighty has put a period to half of the first men of this Parliament, by removes and death. Hopes he shall never see a Rump again. But when he sees sons and brothers of those, who were

undone by the Rebellion, and paid so dear for loyalty, put and thrust out to have a new set, he declares he is afraid of a dissolution, because, God is his witness, he's afraid the next will be worse. (*laughed at*) Would have gentlemen consider the new and the old. The Kingdom so weak, is it time to make it weaker by dissolution of this Parliament? Cannot but think that the end of this Parliament will be the beginning of confusion.

Sir Thomas Lee.] Cannot think the matter moved proper at this time. Is one of those that think this Parliament may have good effect. Perhaps he is one of those that hope better of this Parliament than, it may be, of the rest that come after. Would have one gentleman from our side of the house that can say, rents are improved, that has no other way of support. Sees no other cause that wool sells not, though after the rot, unless that money is crept into a few hands, and then you must expect rents to fall every day. And money is a commodity, as well as other things, and the engrossment of it into one hand governs trade. Would make some representation of your poverty, and why you comply not now, and likewise the sums we have given the King this Parliament—Tells the story of Lord Treasurer *Salisbury*'s showing King *James* a great heap of money he had given away, &c. By his skill a great deal of money was saved. If you show the King what you have given (he fears the remembrance of it is out of mind) as a reason why money runs not round, hopes that will give full satisfaction in our non-compliance with his desires. Hopes the effect may be, that trade may be bettered, and money circulate, that we may be better able to give for the future. Is afraid, by the sums that are asked, that the King fees not how poor we are in the country, but how rich in other places. Would have him advised by the poor as well as the rich.

Mr Williams.] Looks into titles of Acts under that of "aid." Finds the preambles and arguments still to be "necessity." The same thing, though in other phrases.

But

But what's become of all this money? Possibly accounts may have been kept, but he has seen none. Were it possible to give as much as has been given, may we not be told still "that the King is not at ease, and there is a necessity, and if the King be not supplied, extremities must be used?" This frightens him. So he would be gladly told, when there will be an end of anticipations; when, of giving. What account can be given to the country? 'Tis said that rivers run into the sea, but that ebbs and flows, but this of giving money flows and never ebbs. In his country, they are selling bread to buy bacon, but fears that, at this rate, we shall be reduced to water. As we have given without measure, so we have without method. In the rolls of H. IV. grievances precede aid, but at the opening a session now, money is the thing asked, and we have done it without computation. *In James*, there was a solemn protestation in Parliament, "that they could not give supply, till a commutation for grievances, and to go home and consult their Electors whether they deserved supply;" but now we give without that. 'Tis said, "Prepare your grievances"—But 'tis not a commutation; by that protestation the King is obliged by his coronation oath. We are not obliged to give money for it. Observes it was said the other day, "We are not to give money of courtesy; 'tis matter of right." At this rate, the Commons will be in the condition of Deans and Chapters; a *congè d'elire* their Bishop, for form's sake only, sent for and asked. Finds not, in all this Parliament, money denied when asked, and now, in fourteen years time, it may be a precedent upon us for futurity and posterity; therefore let us deny it now, for precedent's sake—Speaks what lies in his way. The King is willing to enter into a strict correspondence with us, and will relieve our necessities; as he tells us his wants, so we are to tell him the necessity of the country. Our duty to the King is to remove the country's fears and jealousies. Let us leave some records behind us, that we are true representatives of the people.

Sir Lionel Jenkins.] To the representation spoken of, i James. It was after the ancient manner. Legal and illegal grievances. There were two rises for it. The one was wardship, the other purveyance, which were both grounded in law. A representation is to move and persuade, and why should the King be moved and persuaded to what he tells us he will do? Had bills been denied, and unfrequency of Parliaments—But when the King can say, the Parliament is continued, and no public Bills, to which the King has said *le Roi s'avisera*, knows not any need of such representation, when the King is before hand with us. Would have Williams show what decay of trade, or religion, has been represented to the King, and not redressed. The Parliament never did it, but when there was a clear obstruction—Therefore would wave representation.

Mr Sacheverell.] The Question is, whether you will make a representation of the present state of the nation to the King, or no. (*He was called to Order by the Speaker. The Order from the House to the Committee was read. He goes on.*) Would now know what you will debate this matter for, if not to represent it to the King. 'Tis said no such thing has been done before, but takes it plainly to lay before the King, the reason of impiety and atheism, and leave it with him, and how poor the nation is, and how we came into it, and leave it with him to mend it. Will tell you precedents that have been. 50 E. III. Where the Commons tell the King; "They had given him so much, and, if well managed, he had been the richest King in the world." 25. E. I. "By reason of such impositions they were brought to that poverty, that they could give no more."—And conclude, "These have brought poverty on the King," and then left it to the King, as he would do now. If any gentleman thinks there's no such thing as prophaneness and impiety in the government, and if he thinks not so much money is drawn into France from us,

us, let him give his negative, and he'll give his affirmative.

The Speaker.] Is of opinion that what is preferred deserves your consideration. When he considers the Bills provided for Religion and Trade, ready to be reported, he cannot but think them worth consideration. To Bills for Religion he concurs, but to make Religion by remonstrances is of most dangerous consequence—Could not believe that, after so long sitting in Parliament and no public Bills returned with *le Roi savisera*—Thinks there's no necessity of a remonstrance, which is in the nature of appeal to the people Whoever will tell the people they are not well governed, he fears that people will give them too favourable an audience—The reformed, meek, humble men were the disturbers of the nation, in the last age, and he fears are so now. How low, how humbly, how dutifully they represented! 'Twas they that acted all the villainies of the former age, and fears they are active for the disturbance of this. If the subject was violated of his right, and justice was but an empty name, then there was some countenance for such a thing.—Could wish that the prudence of those gentlemen that had indemnity, would pardon the slips and failings of the government, and those occasioned by the necessity of the times. If all this while we had represented the undoing men for their loyalty, if we had so represented this—But since 'tis our misfortune to have omitted it, let us not now conclude that all was well done before the Act of Indemnity. That being flipt, let us not take this representation up at such a time, when 'twill be fatal, and tend to our destruction. There is a strict conjunction between the Fanatic and Papist, to dissolve this Parliament, and wonders at that motion from a person who has had so little a share in the attendance of the House*. But when this Parliament shall be dissolved, he fears the shaking both of church and state—Thinks a representa-

* Sir Harbottle Grimstone, who had been Speaker, See p. 341. He was at this time 73.

tion destructive to us and the Government, and would have it laid aside.

Sir *Thomas Meres.*] Looks upon *Grimstone's* motion, as from an ancient man, with *St Paul's cupio dissolvi*, and believes many abroad gape after it. The Question urged of a representation of the state of the Kingdom, he thinks to be the sense of the House—Bills are preparing, but to some points there cannot be any; but if Bills could be in every one, yet would rather have this representation. He slighted all harsh expressions, in comparison of doing good. Five or six times Bills have been cut to pieces by Prorogations. We are tired with hearing them read. In this representation he is confident of the King's grace and favour. These frequent Prorogations destroy all we can do by Bill. This way of representation will remedy it. He has read that of *1 James*, seven, eight, or nine material subjects that concern the state of the nation—As privilege was mixed with them, excellent lessons for *Englishmen* to learn! If that method had been taken and followed, 'twas impossible to have made a rebellion—But 'twas the breaking Parliaments—Would not lose the word—Calm we are now, and in good temper, but if let alone till some grow angry, it may be much worse. That of *1 James* is a good precedent, and would follow it. This Parliament has an instance of it; on this very head of religion, five years ago, you discoursed the danger of Popery, the cause and remedies—Remedies are, where the cause is not, in the King—We are the eyes of the King, and present to him where the canker is, and he remedies it.

Sir *William Coventry.*] Wonders at this Debate, and thinks it out of the way. 'Tis not yet the subject-matter of Debate. Thinks, that, as *Grimstone* is not seconded in his motion, so the thing will go off—*Meres* quoted *St Paul* for it, and so it may pass. He was not so very young, but can remember the calamities of the late times, and is not a little troubled at what fell from the Speaker, “That if this Parliament be dissolved, 'twill be

be the ruin of the nation." The King's government sure stands on better foundations, the laws and loyalty of his subjects—And the miseries of the late times, for a man's own sake, as well as his loyalty, he would prevent. 'Tis wholly unnatural now to make a representation, because 'tis not the matter before you. If you were upon grievances, and if the matters arise where there is no law, then it would be proper for a Bill. But where Bills are already, we send messages to quicken them, as those of Popery, and Trade, and another thing not by Bill, but we represent by Declaration. We represented to the King what the law was, and desired it should be so no more. If slips be in the government, would not do it merely to represent them, but to remedy them. If administration has not followed the law, we should represent it to the King. But would first consider the matter, before you think of a Representation.

Sir Tho. Lee.] Is one of those who would represent to the King the present condition of the Kingdom, but was none of those "meek and humble reformers;" though he is one of those that would not shut the doors to such a representation. Did never think that all advices from hence were appeals to the people. Knows not how else the ill management of his counsellors shall be represented to him. Though things have been made an ill use of, yet anciently they have been good—A fine way to shut up all the gates of the court, and the King never to know when he is ill advised! Would not have every little slip of the Government represented, but only when the King cannot know the mismanagements of his Government by any other way, but representation—And therefore would have it now.

Sir John Duncombe.] Fears that the defect of supporting the Church is in ourselves; not in this House, but among themselves. Some of them, he will not say, have too much, but many have nothing at all. Many places are so unprovided, that the parson must work for his living, and, at this rate, the Church will fall of itself. Ill use is made even of the power of the Church;

it does the Church no good. Not for the ends intended by the ecclesiastical courts ; speaks not to oppose them, or to lessen the authority of the Church—Thinks it worthy your thoughts to open the doors to some men. These are his humble thoughts.

Mr Garroway.] Thinks that we run out of method. The Order of the House is “for the Committee to consider the state of the Nation ;” desires that, in this case, we may go on clearly, and not kindle it up. If all can be remedied by Bill, let it go ; what cannot, let us in all humble duty represent to the King. Let us hear what all these motions are, and then you may consider whether provided for already, and recommend it to the Committee to have Bills in hand.

Sir Richard Temple.] This motion will bring all into confusion. Under the general head of religion descend to particulars—Insist not upon what the law has already provided for, but what it has not. Scandalous livings will make scandalous ministers. Would consider Pluralities, and such Churchmen as are above their callings, and come only to collect their duties. The King of France has wounded the Protestants more by this way than any—And especially moves to consider the scandal of Pluralities.

Sir Philip Musgrave.] Would not have “ debauchery and prophaneness” represented in the state of the nation.

Sir Thomas Meres.] If we are ashamed to represent it, let us say so, and try it by a Question. Thinks the thing is recommended to the Committee, by Order, to be the first head of the matter under consideration.

Sir Thomas Clarges.] How can we see such a profusion of treasure as we have had, and not tell the King of it? (*called to Order*) Is Representation such a terrible word not to be mentioned ? Knows no way of acquainting the King, but by representation.

Mr Mallet.] “ The promiscuous use of women” Would have that considered, for they betray the Counsels of the nation.

Mr Vaughan.] Some sort of men have had the confidence to represent the state of the nation to the King, and very wrongly. We complained, in the late times, of decimations, and have not we had the Bank violated, and persons against oaths brought up to the Council-table? Nothing has been wanting, except taking the King's head off. Not "the humble" but "the proud," reformed the Government, to usurp it. And thinks that these are causes of Representation, and can say more hereafter.

Resolved, That it is the opinion of the Committee, that Atheism and Debauchery be one branch of the consideration of this Committee to be redressed.

Tuesday, October 26.

Mr Howard, [according to Order, attended at the door of the House.]

Debate whether he should be asked if he signed the paper.

Mr Garroway.] If he says, 'tis not his paper, there's an end of the business. Any gentleman may have his name set to a paper.

Mr Williams.] Would have *Howard* answer whether he owned the thing, though he signed it not; for he gave no answer when you sent to him the other day. Would have him closely and strictly interrogated.

Sir Thomas Littleton.] The paper says, "This he wrote to a gentleman to disperse copies of it." It may be not his hand, so that Question is none at all. But "whether he owns the contents of the paper," which may be his paper, though not his hand.

Col. Birch.] Has as ill an opinion of the paper as any man, but would not ask such a Question, out of zeal, now, as may be an ill precedent to ask any Commoner of *England* a Question against himself. But as closely as you please, not to entangle him—Ask him, whether he owns the paper, and leave him to his answer, and when answer is given, then judge whether 'tis satisfactory or not.

Mr *Howard* [being called in] was allowed a Chair, without the Bar, because of his lameness of the gout.

Then the Speaker delivered himself thus.] The occasion of your coming hither is a scandalous paper, which the House has more than a common presumption, was dispersed by your Order, and subscribed by you. The House would know, whether the paper was signed by you, or dispersed by your Order?

The Paper was brought to Mr *Howard* by the Clerk.

Then Mr *Howard* thus spoke :

" My respect always has been to this honourable House, and I hope you will excuse me from giving any answer to a thing of this nature, not knowing who charges me with the writing it. As to the resentment of my dead brother, I believe any man who had lost so dear a friend, as well as a brother, might be provoked to some passion. I will not excuse myself—I cannot equally bear such a loss. I am the more concerned, because I knew my brother so much an *Englishman*, as to go with the sense of the Votes of this House, so far as he understood them—I have met with a Paper very extraordinary, but, because it doth not immediately touch me, shall offer it to your better consideration. I shall always owe respect to this honourable House, as becomes me, and hope I have not done any thing to incur your displeasure; but if so unhappy as to rest under it, shall humbly submit to any punishment—I find the Paper so extraordinary a one, that I think fit to offer it to the House."

The Speaker.] Have you any thing farther to say concerning the Paper?

Mr *Howard*.] Let any man prove that it is my Hand.
He withdrew.

Mr *Stockdale*.] He has so far owned the Paper, as to submit to your justice. They are words of high nature, and dangerous—Would have him sent to the Tower, but, being a worthy gentleman, not to come upon his knees.

Mr *Williams*.] *Howard* has been asked, if concerned in the Paper—He has had as fair proceedings as may be. He was examined first by a Committee, and did not answer the thing at all. Has had a long time to consider of an answer. An express confession could not be expected.

He

He has behaved himself modestly. He, in a manner, owned the provocation that might make a man so express himself. The other day, when the Paper that was posted up was debated, your Member, (Lord Cavendish) was present and sat mute; he denied not the thing—And now 'tis the same thing in this gentleman. He has, in a manner, stood mute—Would have him committed to the Tower.

Mr Streete.] Before you proceed to sentence, would read Mr Howard's Paper. Possibly it may guide your judgment in the Paper.

Mr Mallet.] He has as much as confessed the matter, and it concerns not only these persons, but the Protestants in general.

Sir John Knight.] 'Tis fit you should read the Paper.

Mr Vaughan.] Speaks to your proceedings upon the scandalous Paper. He owns provocation, and gives you no answer to justify himself.

Col. Bircb.] Somewhat like “Did you do this, or not,” was asked him. He answered. Knows not how to reconcile this Paper he offers, and that he is accused of—The Paper may be part of his defence.

Sir Thomas Lee.] Consider what the flames are, and what water you have thrown on them—He fears that the Paper may be yet worse. Had the Paper been his own, you might have read it; and now you ask him about the scandalous Paper, he tells you “he has met with a Paper of an extraordinary nature.” Now the Question is, whether such a Paper shall be read, before he opens what it is.

Serjeant Maynard.] A man is not to accuse himself when a Justice of the Peace examines him; though not upon oath. Yet he may ask him, guilty, or not guilty? The Paper he offers you is not relating to his offence. Knows not what you may imagine in reading it, unless to hear news.

Mr Sawyer.] If the gentleman had opened the contents of the Paper, then the House might have judged whether concerned or not—We may have a ballad read else. The

The Speaker.] The contents of the Paper you have already sentenced, (that which Lord *Cavendish* posted up) and given judgment against.

Mr *Sawyer*.] You must, upon sentence, pronounce guilty, or not. He was called in to know, whether he owned the Paper or not. At Common law he is a mute. If the person denies it, then go to proofs; if he does not deny it, 'tis fair to put the Question, whether he be the author of the scandalous Paper, and he must give his affirmative to it.

Sir *Richard Temple*.] Has much respect to this gentleman, but seeing he cannot excuse himself, neither will he do so. There's a suspicion that he was the promoter of the Paper, but since he has neither denied nor confessed it, but in a manner excuses it, neither can he excuse him—Would have him sent to the *Tower*.

Col. *Birch*.] Agrees with *Sawyer*, that, if *Howard* deny it, we are put upon proving it; if not, 'tis taken *pro confesso*, a constant Order—'Tis contrary to Order for the Speaker to discourse with any person. If the House thinks him worthy to be heard, so must the Speaker. Could not the Speaker require him to open the Paper, for then you had opportunity to let him know the justice of the House in condemning the Paper? The least that can be done for the honour of the kingdom is to send him to the *Tower*.

Mr *Sawyer*.] The House is to judge of their own evidence. 'Tis of dangerous consequence for people without doors to be judges. Therefore he believes *Howard* to be the promoter, and disperser of the Paper.

Mr Secretary *Coventry*.] What *opinion* he is of he can tell, but what *appears* is another thing. Would give judgment in this as if all the world heard your evidence. Now whether *Howard* be the author, is the matter of fact. But to say "The thing appears, because a man denies it not," is not for your honour.

Mr *Vaughan*.] The reason for giving money, must, at the same rate of *Coventry*'s argument, begin without doors.

Mr Boscawen.] If *Howard* is not the author of the Paper, there is less reason to think him the promoter. If he be not the author of this, he cannot say he is guilty of any thing else.

Sir Edward Dering.] Would do the same justice to him, as you have done to Lord *Cavendish*.

Sir Philip Harcourt.] That is unequal. *Howard's* offence reflects upon the whole House, and Lord *Cavendish's* is a personal thing only.

Resolved, [That it is the Judgment of this House,] That *Mr Howard* is the author, promoter, [and disperser] of the scandalous Paper.

Ordered, That he be committed to the Tower.

Mr Boscawen.] Your Vote does not say "what Paper," nor "what time," nor "what Paper was voted scandalous."

Sir Thomas Lee.] Would have the Paper entered into the Journal, that it may be seen what 'tis you pass Judgment upon.

The Speaker.] You have formerly read, and condemned, a Patent, and that Patent not entered in the Journal.—Petitions are frequently read and not entered.

Sir Charles Harbord.] Though those were not entered, yet breach of Privilege is entered always—Would have the Paper read, and entered.

Sir Richard Temple] Libels you have censured, but not entered into the Journals.

The date and time of the Paper was ordered to be entered into the Journal only.

On a motion [being] made for burning the Paper.

Sir William Coventry.] Supposes no Paper more fit for your censure than this. If one sort of persons think deeper, and a harsher impression be made upon them than others, he knows not the fate of it, when we are up, and would prevent it.

Lord Cavendish.] He was sent to the Tower for breach of Privilege, but what that breach was, he never knew

yet. It seems comparisons are made between the Papers, one of which you have voted “scandalous, and seditious.”

Sir *Charles Harbord.*] The families of *Howard* and *Cavendish* are one. *Howard* is *Cavendish's* maternal family—Put neither one Question, nor the other.

Sir *William Coventry.*] He never heard nor saw the Paper said to be posted up by Lord *Cavendish*, and would not be understood to reflect upon that noble Lord.

The Question for burning *Howard's* Paper being put, whether it should be put or no, it was carried in the negative*.

Sir *Nicholas Carew.*] Moves that the money to be raised for building the ships you have voted, be put into the Chamber of *London*, and not be issued out thence without an Order from the Lord Mayor, and Common Council, to be the more certainly applied to the use of the fleet.

Mr *Sacheverell.*] Is the rather for the Motion, because the money formerly was not put to the use of the Fleet, which it was given for.

Sir *Thomas Meres.*] There was a method of appropriating the money that was given for disbanding the Army in 1661—Will say one word for all. We cannot trust the Exchequer, and therefore would have the money put into the Chamber of *London*.

Mr *Garraway.*] This is not the first time of his jealousy, because not the first time obligations have not been made good. If this money is to go for ships, is as free as any man to appropriate it—Agree of the method afterwards.

Mr *Sacheverell.*] Then leave the Chair—We all see what we have to trust to, and shall do accordingly.

Sir *William Coventry.*] Would have satisfaction how this money shall be used; which may make gentlemen more satisfied in giving. The new imposition upon wines were given only to pay the King's debts,

* This is not mentioned in the Journal,

and

and here we had not only general assurance, but the particular undertaking of Lord *Clifford*, and yet that money was turned to a revenue, and no debt paid. Notwithstanding all the engagements to the contrary, yet the Exchequer was stopped, and there is a more easy pretence of stopping the money there by the King's ministers, which cannot be in the Chamber of *London*. And therefore would obviate one objection, that the stop of the Exchequer was only for the King's revenue. Has heard it said, that, at the time Sir *John Bank*'s money was lent to the Exchequer, upon the Act of Parliament, 'twas refused him, when he called for it, by Sir *Robert Long*. *Banks* desired his friends he brought with him to witness that, his money was demanded and stopped, against law. *Long* persisted in not paying him, but, upon consideration, found it not fit to break the Act, upon so small a sum. This shows you that money lent, upon the security of the Act of Parliament, has been near stopping in the Exchequer. Therefore would have the Committee consider this with liberty, if they have it not already.

Sir *Robert Howard*.] Gives an account that payments upon the security of the Act of Parliament, were never stopped in the Exchequer. Whenever a payment was found due by Act of Parliament, the money was never denied. *Meynel* had his money, though he took it with one hand, and paid it with another.

Col. *Titus*.] Suppose he gives his servant money to buy him locks and bolts for his house, but finds the money spent, and none bought. Shall the master of the house therefore never buy any more? No; but he'll turn away that servant, and employ him no more.

Sir *William Hickman*.] Three hundred thousand pounds were given the fleet, to support the Triple Alliance. Few ships were sent out, but a slight guard. Would have it recommended to the Committee, to consider of some way, the better to appropriate this money that we shall give to the use of the Navy.

Mr Sacheverell.] Exclude but the course of the Exchequer, and go what other way you will, for he sees the business of the Navy will never be done.

Sir John Duncombe.] What can there be of jealousy that ships should not be built? 'Tis impossible for any man to think it. The money must build ships.

Col. Birb.] The reason of the thing considered first, 'tis a vanity to think we intended to build ships without money. Ill use may be made hereafter of what you have already done. Would have the people believe that this money is lodged securely. Few tons of timber are yet ready, and what you do must be speedy. Is sorry the proverb, "sure as Exchequer" is gone. Hopes it may come again. If a man employed in building these ships ask for his money, and 'tis in the Exchequer, who will meddle? The King has told you, "He'll be a better husband." 'Tis for us to chalk him out the way. There was no reflection upon the Chamber of *London*, when money was lodged there once for disbanding the army, and lodged there by the consent of every man, for the better husbandry of it—Would put the Question.

Mr Secretary Williamson.] Moves to enter into the matter, without umbrage. The thing we are doing is to bring a Question, whether we shall do it, or not. Enter not here into particulars, but you may give general instructions to the Committee.

Mr Vaughan.] Though not jealous of his wife's honour, yet should you, or any one, come out of her chamber in drawers, he must be jealous. The Exchequer has done no good in this; by experience we have found it. Would have this money therefore put into the Chamber of *London*.

Sir Thomas Clarges.] Would have it referred to the Committee, to consider the best way of appropriating this money to the Navy.

Lord Cavendish.] Let those that think not this a good way, propose another that's better.

Sir

Sir Thomas Meres.] Will any man place his money where he has been so often deceived? The law was prefaced for it, and trusted the Exchequer with it. Some say, “punish the officers;” but we have not hearts to punish, we are too good natured. He foresees they will not be punished by the House, and knows of no where else, where they will be punished. Since the thing has been started and debated, the Question is, whether you will lodge this money in the Chamber of *London*, or, whether the Question shall be now put, or no.

Sir Richard Ford.] *Ernly* told you a piece of news that he never heard before, that “the Chamber of *London* had failed”—Would have him assign a time when it failed.

Sir John *Ernly*.] Widows and Orphans are without their money.

Sir Richard Ford.] 'Tis so far from that, that the Chamber refuses 20 or 30,000*l.* every week, though they may have it without interest—Would have persons named, who, 'tis said, cannot get their money.

Sir Francis Lawley.] He himself had the City Seal, for money in the Chamber of *London*, and could not get it.

Obser. To clear a matter of fact, a man may, by Order, speak again.

Mr Secretary Coventry.] Foreigners will say of this, that when a little sum is to be given, no sort of men are fit to be trusted with it. Therefore would go first to the Committee, that the money be appropriated to this use. The Debate is, where shall be the purse? He never knew money found that wanted a purse.

Sir Eliab Harvey.] Would ask only one Question—How *Lawley* came by that debt in the Chamber of *London*, and how it was contracted? And then the House will be satisfied.

Sir Francis Lawley.] 'Tis said it was lent in ill times, but he has the City's Seal for it.

Mr Love.] The Seal was extorted from particular persons; in the troublesome times, and the Chamber pays it not, because it was forced from them. If you expect this money to be well employed, you must put it into the City's, or some secure hands, or you are never like to have it rightly employed. Merchants ships are built cheaper than the King's ships, because they may get their money how they can. 'Tis well known that it may be done for seven or eight pound per ton, if the carpenters be assured of their money.—The Merchants pay is not the third penny of what the King gives now, and there is no reason but the King's money should go as far as another man's money, if the workmen were paid as they ought to be.

Sir William Coventry.] In the ill times, money was extorted from the Chamber of *London*, to carry on the war, and so the Chamber was sued for it to an outlawry. It was not thought fit in justice, &c. and no insolvency in the City.

Sir Charles Harbord.] I James, Accounts were given to the House, and they did not satisfy. The Exchequer has failed, and there is nothing worse for the Government than the failure of it. The morning after the stop of the Exchequer was made, Sir Robert Long told him of it. He believed it not. He told *Long*, was it his case, he would rather lose his life, or office, than suffer it; for an action of the case might be brought against him for the money. 'Tis moved, "That because the Exchequer has failed, the Chamber of *London*, &c." 'Tis in your power to give directions to the Committee, who are not to give law to the House—He has had occasion for these sixty years to know the Chamber of *London*—But, upon the Question of the payment in 1640. The Council of *York* was in distress for money, to stop the proceeding of the Scotch army: They sent to the Chamber of *London*, to lend the king 50,000l. The Lords *Pembroke* and *Northumberland* went for it, and 'twas lent; but they never had it again—Thinks

the

the Chamber of *London* the best security. You must have public, or private, security. The Chamber has great helps to make good what they do, and you are safe in their hands, and the Act will bind them beyond all seals they can make.

Sir *William Bucknall.*] 'Tis not what I know, but what the people think. If the people believe not the money will be paid, the people will not trust where they think they shall not be paid. The Chamber of *London* is good credit. Our case now is as *Titus* said—If this money be ill spent, yet would give again—Hears a great disagreement where it shall be placed. Who shall call the Exchequer to account? He could not see but that the Chamber of *London* may be called to account—Should we be against the interest of the King, if so placed? You give workmen so much, if in the Exchequer; if in the Chamber, not so much. Sees no advantage to the King's service, for it to be in the Exchequer. If this be the only Question, where the money must lie, let's lay it in the securest place. If the people that are to have the money, think the Exchequer the cheapest and safest place for it, he is for saving money. There is not only delay and trouble to get money out of the Exchequer, but if he has his money, the charges are so great; five pound *per cent.* When he sat in the Chamber of *London*, there was never any denial of payment, neither in the plague, nor fire, but money of his own they have refused. Certainly the appropriation of this money is, according to the opinion of the people abroad, the best way to attain your end. If this money be misapplied, we must give more and more. Hopes every man is as ready for this Vote to build Ships, as he, when well assured of it.

Sir *Winston Churchill.*] He is not for the Chamber of *London*, but not for the reason he has heard yet. We do not consider, that perhaps the greatest grievance we have is, that the City draws all our Money thither. He serves for a port that may build ships—Would secure

the money, so that the several ports may have their share in building them, who are capable and convenient for it—Thus you will circulate the money.

Mr Boscowen.] They have no such convenience in the western ports. The Question is, whether you will give the King Money or Ships; so much Money or so many Ships. The best service is which way to build cheapest. The Chamber of *London* can borrow at five pound per cent: The Exchequer would borrow at twelve pound, and cannot get it. People that lend enquire after their security. A nobleman, or parliament-man, cannot take up money possibly like another man, of less estate. People will lend where the security is best. Therefore is for the Chamber of *London*.

Sir George Downing.] You are the restorers of the Government, but this about the Chamber of *London*, is setting up a new Government. What was done to stop the Exchequer, was by order of Council, and by the Great Seal; not orders of the Exchequer. That place that gives accounts most sure and constantly, is the best place. Money was paid into *London* at the beginning of the rebellion, and dreads every thing that may have its likeness: Would devise from Hell to say, “destroy the Exchequer, and take this way,” which is one of the best securities—With it you destroy property. The Exchequer is one of the fundamental pillars of monarchy, the easiest and the cheapest. In the year 1660, money was paid into the Chamber of *London*, not yet accounted for, for disbanding the army, and no man can ever find out how it can be accounted for, nor ever will. Had it been in the Exchequer, it might. Shall it be said, we put it into such hands, nay vote it into such hands? Some are hot enough that the Exchequer is not to be trusted; when that trust is gone, the government is gone. Has any thing been misplaced in the Exchequer? Mend it. Resolve that the money be appropriated; and refer it to the Committee to make it effectual.

Sir

Sir *Nicholas Carew.*] He is concerned because he made the Motion. Would have it known that he is no gainer by the wars. He is the poorer, and some others within these walls the richer, but sees we are now all Cavaliers.
(Reflective.)

Sir] One Reflection begets another. The Speaker should have taken *Downing* down for reflection. If he (the Speaker) will not give us leave to answer reflections, we'll take it.

Col. *Bircb.*] He did not move this; but the Motion seems to be so uniting and parliamentary, that he seconded it. As for what is said about the rebellion, supposes *Downing* means what was done after 1647, for then he (*Bircb.*) was pulled out of the House of Commons by the ears. The word "1660" was looked up this way. Those moneys were paid into the Chamber of *London*; and at one penny *per* pound moneys are paid there. It was issued thence upon the Duke of *Albemarle's* disbanding the army; and *Downing* says, "not yet accounted for," which could not be gathered up so clearly. Esquires and Lords money in the Poll Act lies yet unpaid, and believes it in safe hands. All that money is received and declared so some years ago. As far as he knows, all manner of justice was done. When he had money put in there, he had five pound *per cent.* and thought it safe.

Mr Secretary *Coventry.*] Will not decide which of the offices, the Exchequer or the Chamber, may be the most easily governed. As to the Chamber of *London*, the placing of the Money there imports a Treasurer. Hopes never to see that day, for the Parliament to have one Treasurer, and the King another. He knows what will follow. Weigh it well, whether you cannot have as good security from the Exchequer as from the Chamber of *London*. Would have the Money appropriated, and a Grand Committee to debate the way of it.

Mr *Garroway.*] What you do is by the consent of the King, and with his approbation, and so you divide

not

not the King and the Parliament. All *non obstantes* can not hinder the money being disposed of accordingly, when you vote it to the King to build ships only. Confidence begets credit, and that experience. Had that been so, you had not been put to give Money now for ships. As for what's past he'll say nothing of it—But those people we have nursed up here, are they that fright us—We are in good temper at home—Not you alone—The Lords will show you, if this be an intrenchment on the King's Prerogative. If the King sees such a thing, he'll bid you take your Bill again. 'Twill not be so horrible a sum that the City of *London* should be thought to run away with it. 'Twill not be raised in a day, but by gradation; the country is exhausted, and must have time. Two years for building these ships. Materials are to be bought, and workmen agreed with. The City has 100,000*l. per ann.* for the security of this Money, and you will not trust them for above half this Money at once, and it may be safely lodged there.

Sir *Henry Capel.*] Has a favourable opinion of the City of *London*, but sees no need of so great caution in placing this Money. If the number of ships be fixed, as is said, the sums will not be very great, and thinks this is a blow to the best of Governments. It looks like some mistrust, for this one time to trust this one sum in the City's hands. The better *London* performs this trust, the more danger there will be for future sums to be lodged there. Fears it will come to this, Who will trust the City, and who will trust the King, here, whom we ought to trust? Would refer the Question to the Committee of the whole House.

Sir *Thomas Littleton.*] Would put the proper Question, "for appropriating the money to be given, for building of ships only, and to be lodged in the Chamber of *London*," as the Debate went. Especially when no man is precluded from appropriating in general. You were informed, "that the Money to pay off the army was placed

placed there, *when there was no King in Israel*,” but it was in 1661, which is a precedent in this King’s time, besides many others. ‘Tis said “this is an ill precedent, and may wound monarchy.” Take this along with you, and the wound will be healed. This rivalship will be hereafter betwixt the Chamber and the Exchequer, that it may reduce the Exchequer to its former credit. Therefore is for the Question.

Sir *John Duncombe.*] When you have once got thus into *London*, when will you come back again to the Exchequer? And will not arguments be as good then as they are now? The methods of the Exchequer, above all things, are the least subject to error. Accounts are as strictly kept as any where. If there be any place to have it safe in, ‘tis the Exchequer.

Sir *William D’Oyly.*] ‘Tis said “That the Chamber of *London* was the Treasury, when the army was disbanded.” But there’s no such thing, for the Treasurers were named, and they obeyed Orders from himself, and other Commissioners. The danger is, suppose an end will be put to this Parliament on the death of the King, and the King should issue out Writs, and he happen to have such a Parliament as the Long Parliament, nothing can invite rebellion like such a sum of Money. It may happen so, because it has; therefore would not put such fetters on this Money.

Mr *Vaughan.*] He admits that the law of the Exchequer carries more sacred methods in it than any place. But it has been violated. The sanction of the Exchequer began before your Act, and a Man might demand his Money, and receive it—The Exchequer continues under that breach of faith, to this day, and when the credit will return, let others tell you that can. The City needs no Money, they would not else have it offered at 5 l. per cent. The King once put Money, by Act of Parliament, into the Chamber, and he would have it so now.

Sir

Sir John Duncombe.] 'Tis in your power to regulate the fees of the Exchequer; the officers must live. *They that serve at the altar must live by the altar.* The Chamber must have fees; the fees were so small in Sir Robert Long's office, that they were worth nothing. He believes the Lord Treasurer would be very tender of a *non obstatu*.

Sir George Downing.] The whole charge of the Exchequer is, for every hundred pound, a mark; and this is not only the fee for making good the account, but to answer false money and all.

Mr Waller.] If he had his own natural inclination and desire, he would have taken this occasion to reform the Exchequer, which, for ought he sees, breaks loose from all Acts of Parliament, when the King, Lords, and Commons made Orders assignable, and they are worth nothing, which would make farthings current money. The Question now is like to be, whether this money shall be placed in the Chamber of London. Rather than have nothing, would put it there. Old Sir Edward Coke once would have had money in the Chamber, because the Exchequer was once robbed by THIEVES, and the Chamber never. The Irish money was put into trustees hands, and he had the honour and trouble of it. In 1641, when the Council of war signed, the treasurers paid it; they paid one half, and the times got the other. The Chamber is not so atroce a thing as is imagined. One objects, "it will be a fine reputation for us abroad." To which he answers, we have given tonnage and poundage for the Navy; and no Navy, no reputation; and now we shall have money, reputation, and a Navy. 'Tis said to be "strange, that the King should have one Treasurer, and we another."—'Tis impossible; for the King makes the Law with our advice—The money raised upon Coals, for building the city-churches and halls, never comes into the Exchequer, and is no dishonour to Whitehall—That of the Act of Coinage likewise. Say some, "What if we should have a dissolution of this Parliament, we should have mad doings." The thing depends upon the King's pleasure,

pleasure, and he will say nothing to it. The Law commands us to trust the King with Peace and War, and there's no mistrust. The Law puts and commands a trust in us ; and shall any body say, we give too much, or too little ? The trust of chusing Parliament lies in the Commons, as much as in the King ; and it is not imaginable that they should chuse ill, since they have chosen this Parliament, the best in the world.

Mr Sacheverell.] 4 Hen. VI. Money was paid into the Exchequer, and in the Lords Roll, declared, “ that the King might dispose of it, at his pleasure, though with ever such limitations and conditions upon it ; ” which makes him the rather desire that this money should be in the Chamber of *London*.

Mr Pepys.] Would have been silent, if what he intends to say in this busines was not entirely new, or if so proper for any body to say as himself. Of all hands, he knows this money will be most properly in the King's single hand, and none else ; but Bonds may be put upon the Lord Treasurer's hands, and other officers, and the King's hand is the safest on this occasion. A retrospection of the ill management you have found in the Navy, gives this jealousy now. Is the state of the fleet worse than when the King came in ? No. In quality, rate, burthens, and force, men, and guns, 'tis in better state than when the King came in. Let any man offer a contradiction, that 'tis not the best fleet the kingdom ever knew. There are eighty-three sail, great and small, more than in all his royal predecessors ; and he has built more ships in fourteen years, in burthen and value, of that fleet, notwithstanding the war—The most beautiful are the King's own growth and building. 'Tis said, “ of late they have been neglected ; ” but there have been more ships built since 1670, than in any five years from any time backward. Another justice, next to the King, he must do the Lord Treasurer. More ships have been built in this Lord Treasurer's time, than in any ten of his predecessors. All this said, why will you not trust the King ? He has the honour of a near attendance upon

upon the King, by his office ; none of his subjects have so many thoughts, or take more pains in the Navy, than this master of ours. He knows one thing that remains to be answered ; “ why then do we want ships ? ” ’Tis not for want of his royal care. The King has been in a conspiracy, if he may so say, with the officers of the Navy, how to get money for ships. The state of the Navy was this, when the King came in—He was in an actual war with *Spain* ; he found 150 ships, great and small ; and having been four years all abroad, and in such a pickle ! 600,000*l.* debt on the Navy. The King has repaired the old fleet, and built the new, the best in Christendom ; and no wonder *France* has so many ships, when they but lately have had considerable ships of war, and those all new—Thinks the King’s hand the best, &c.

The Question being put, Whether the money to be raised for the ships should be lodged in the Chamber of *London*, it passed in the negative, 171 to 160.

Wednesday, October 27.

Exceptions being taken at some words which fell from Sir *John Hotham*, by Sir *Philip Musgrave*,

Sir *Thomas Clarges* said,] He would not have the authority of the Chair degraded. The words are to be set down and agreed.

Mr Secretary *Williamson*.] He has his liberty to take his exceptions at what was spoken by *Hotham*, as other gentlemen have theirs, *viz.* “ That Members have been drawn from us, and the sums we have given have been employed to that purpose.”

Sir *Nicholas Carew*.] Would have a Committee appointed to enquire into these things, and clear your Members from aspersions.

Sir *John Hotham*.] Explained himself, “ That the Revenue is collected by several of the Members, and by it they are withdrawn from their service here.”

Sir *John Knight*.] Would know “ what Members ” are drawn away from us.

Mr

Mr Garroway.] Knows no body reflected upon, (*Knight* saying “we” and “us”) unless he be of the number, and has employment.

Mr Stockdale.] ’Tis an excellent motion, to purge ourselves by a Test; and would have a Committee to consider of it.

Sir John Coventry.] Possibly, though the nation be poor, yet there may be talk of guineas—Would have us purged of it. Members have had letters sent them from Officers of the Court, some time before this Session, to hasten their coming up—Would have that enquired into.

Sir John Holbam.] Would know who has received such letters.

Sir Cha. Wheeler.] ’Tis hard for us to recover surmises, and suspicions, without doors—Telling the Yea’s and No’s, who they are, may be of ill consequence abroad; and whenever you are pleased to appoint such a Test, shall be very willing.

Sir Thomas Meres.] “We” and “us” are very good English words. We all agreed, as to appropriation of this money. Why should we lose the first person plural! But where it is applied to parties, there we may have exception. Your Question is, for such a Test as is proposed. The thing is talked of without doors, and some such Test would be very seasonable. The last Session, there was some such thing, and was proceeded on, very forward. Now is ready to think, that Guineas are raised in their price.—Knows nothing; but believes these to be idle things; but would take off the report.

Mr Williams.] Has not seen these Letters spoken of. Perhaps they were sent by the King’s command. They are illegal, and not justifiable—Would have these Letters produced, and you may then judge, whether they are justifiable, or no.

Sir John Coventry.] If Letters are not justified, they ought to be corrected; and would have the Letters produced.

Sir Winston Churchill.] There can be no greater infamy than this Test, in casting reflection, suspicion, and self-

self-condemnation—Would rather pass a Vote, that such Reporters without doors, if taken, shall be severely punished.

Sir *William Coventry.*] 'Tis said, "there could be no greater reflection upon the House, than this Test." He knows one greater reflection; that is, refusing such a Test. The last time we met, enquiry was made into 5000 guineas, but no report of it was made from the Committee. 'Tis impossible to silence mens reports, or to keep secret what is said in this House; and all such reports are equally disadvantageous to us all. The thing being cut off by Prorogation, if not revived now, the people will think the majority of the House afraid of that Test. *Grimstone's Motion** was not thought feasible, but nothing can tend to a dissolution of this Parliament, like the people's ill opinion of us, and then to be no more useful to the Government, is an obloquy upon us, and we become abominable in the eyes of the people, though not Parliaments in general—An herb, *John*, in the pottage. But when this Test comes thus far into Debate, and is rejected, what may be the consequence of it? Therefore is for the Test.

Sir *Thomas Lee.*] Reports of Guineas come up and down so generally, that he cannot tell who here heard it reported, that he is one of those who has had them. If he had any, he has taken pains for them; he has attended the service very closely.

Sir *Charles Harbord.*] If any have had, they have ill deserved them.

Lord *Cavendish.*] If we lose the opinion of the people, we can neither serve the King, nor the Country—Would have one word added to the Question—"For the Committee to enquire both after Letters and Money"—And Letters have been received.

Sir *John Coventry.*] Seconds the Motion; for he believes that both "Letters and Money" have been received.

Sir *John Hanmer.*] Would have the Committee enquire as well who have had Manors, as Letters and Money.

* See p. 341.

Col. *Birch.*] We say in the country, that if a man intends to pay well, when he borrows money, he gives a Bill, or a Bond, or any thing else. Is mighty glad to find this Debate. Thinks we are not in a capacity to give money to build these ships, unless this Test be done. He finds no reason in the world against it, therefore would direct the Committee in it.

Sir *Edmund Jennings.*] Would have every man declare what he has by offices, or any other way, and refund. The King has had much money of his, and if he has any of the King's, shall willingly refund it,

Sir *Henry Puckering.*] What does that look like? Impeaching. Perhaps you may find half the House concerned in the giving Motion. This neither becomes your prudence nor gratitude—These little things, to rip up into little offices! The King is a liberal Prince, who rewards services.

Sir *Henry Capel.*] Is sorry to differ from him, having served the Crown—But is there any thing so dear in the world as the honour of this Parliament? Wonders, when things are so spoken of abroad—Moves, of all things in the world, to put this Question.

Sir *John Holbam.*] Differs from *Jennings*. Yourself, Mr Speaker, have had good things from the King, and have deserved them. The labourer is worthy of his hire; and he would not have the Question of refunding.

Mr Secretary *Coventry.*] He that has betrayed his trust, and his honour, in taking money, will be so wise as to deny it, for his honour.

Sir *William Coventry.*] As you put the Question, Mr Speaker, 'tis taken for granted that the House has swallowed it. But he would have the Test, for Members to purge themselves from having received.

Col. *Titus.*] Supposes 'tis the intention of the Enquiry, "That if any man, &c." upon report that several Members were corrupted. The last Session you made an Order, and he would do the same thing now.

Sir *Thomas Lee.*] The last Session, there was particular complaint of a Lawyer.

The Paper of the Test the last Session was read, and referred to a Committee. The Committee was instructed to enquire what Members have had guineas, promises, rewards, or letters, to corrupt their Votes.

[The House was informed of certain letters sent to particular Members, to summon them to give their attendance upon the service of this House.]

Sir *Hen. Goodrick.*] Thinks that his family has served the King faithfully, and wonders that he has not received a letter, as well as his neighbours. He thinks himself slighted in not being thought so well worthy. Would have the Secretaries of State inform you, who they sent letters to, and by whose direction.

Mr Secretary *Coventry.*] The Secretaries may reveal or not reveal it, as they have Orders from their Master. If they are unlawful, ignorance has led them into a fault, for obeying the King's particular command. His ignorance, if so, has betrayed him and his brother Secretary. These letters are not guilty of the inconvenience, mentioned, of making faction. *Goodrick* would have the Committee to know, why not to one Man as well as to another? Shall any Man ask the King, why not to one Man as well as to another? If for any such ill intention, as is mentioned, the style would be accordingly. Is sure from his conscience there is no reason to imagine surprize by it. A *Cambridge Scholar* was asked, why he wore but one spur? He replied, "That if his horse went on one side, he would be hanged if the other side would be left behind." In case of surprizal, private Orders might have gone, not thus publickly sending to gentlemens houses.

Mr Secretary *Williamson.*] Neither he nor his brother are ashamed, nor ought to be, of these letters. They came from no ill intention nor distinguishing end. There was a report that the House would not meet; several came to him to know. The King commanded him to assure all his friends and acquaintance, that they should meet, and so discountenance this report. There was no distinction in these letters amongst such as were of his conversation. Believes generally that these gentlemen might promiscuously acquaint their neighbours, that there might be a full House. Sir

Sir *Thomas Meres.*] There being a report that these letters were sent, he cannot believe the King in the least concerned in this matter, nor the worthy Secretaries. He has heard of an Order of Council; but reminds you that the Council cannot meddle with *meum* and *tuum*: He heard they have done it, by reference, thereby terrifying causes fit for *Westminster-ball*—But much more they are not to meddle with matters of Parliament. If then they have so mistaken the Common Law of Parliaments, 'tis good law for the country. Not good to engage a fourth part, and leave the other three disengaged; and for the story, “the horse and one spur” spoken of, if the literate and illiterate had been upon one horse, they would have come together.

Col. *Birch.*] 'Tis absolutely necessary to sit here on an equal foot. Never knew any thing of this nature not gone to the bottom of, that had good effect. 'Till this matter appears bare and naked, there will be jealousies. Therefore moves “that the King may be moved to give leave that the Secretaries may produce these letters, to see wherein they differ,” and believes this would give satisfaction.

Sir *William Coventry.*] Thinks there is a difference in the nature of the letters, by the authority of the King, and that of the Secretaries. There is a difference betwixt a private Man's letter to a Judge, and a Privy Seal or Great Seal sent him about a cause. Thinks these letters strange and unequal. The ancient way was to give such notifications by Proclamation. When Parliaments have been assembled, and not many Members come up, and not full, they have adjourned for some time. But if any man was declared governor of a town, or a captain, these employments were a dispensation to his attendance here. If other differences be made, 'tis a great reflection upon the House. These people principally refer to us for their Liberty and Money, and the King recommends Religion and Money to us in his speech, and he remembers not but when any Bill has been depending concerning Religion, against Popery,

that he has been as forward and zealous as any man—possibly not so forward in money—He is at a stand, having had no letters as well as other men, but for the motion of “ sending to the King to have leave to inspect the Secretaries books,” he is against it—It may be in another thing as well as this; sees no use of that. But you may attain your end another way, by representing the inconveniences of such letters, from the inequality of it, for his Majesty’s service, and to prevent it for the future.

Mr. Waller.] If to find a fault in this matter, a Committee is very good for it. But there is a fault somewhere, in not giving advice to the King about these letters. Privy Seals are forbidden to walk abroad for money, as they have done formerly—They should not meddle with the private purse, nor the public purse. Writs call us hither *ad consulendum*, but he perceives these letters are *ad dandum*.

Col. Titus.] Perceives by this, and many other experiments, that many things are too fine and subtle for his gross apprehension. Just before this Session of Parliament, the King seemed to be wonderfully enamoured with a Parliament man; and would see them here with the first. There may be an inconvenience in sending these letters to country juries; they may be imposed upon and frightened; but persons here having too much integrity to be imposed upon, ‘tis not to be imagined.

[*Resolved*, That his Majesty be humbly moved, that the Members of this House may be summoned to give their attendance on the service of the House by Proclamation only.]

*Dr. Sancroft**, Dean of St. Paul’s, was appointed to preach the 5th of November. Adjourned to

Tuesday, November 2.

In a Grand Committee on the Ships. Sir John Trevor in the Chair.

Sir Thomas Meres.] Of eighty guns, and upwards, we have eleven ships, and the Dutch but ten. Five are as many as we have need of.

* Afterwards Archbishop of Canterbury, and deprived at the Revolution.

Sir

Sir *Thomas Lee.*] If of forty you want but eleven, five in number, of ninety guns, are an adequate proportion. In great ships we are already proportionable to our neighbours. You want only nimble sorts of ships, to catch them when they run away.

Sir *Charles Wheeler.*] Is for light ships, to catch them, as is said, but would not divide the bear's skin before he be dead. The last naval war has given us experience of great ships, that they maintain the fights. You must have so many great ships, to make a good stand against the enemy. 'Tis a maxim in the Civil law, that what is fit, is as fit as the fittest. If you bring enough for your purpose, 'tis your safety, and your walls. That which is said "of their building more ships, and therefore we must do so to" is no argument—Then you have your flag-ships so seconded as will be a navy fit to encounter your greatest enemy. Therefore moves that two of the second rate ships may be built.

Sir *Henry Capel.*] Would have *Pepys* asked, why eleven of the second rate are requisite to two of the first rates?

Mr *Pepys.*] Propounds but what is needful, without which he thinks the fleet of *England* not safe. The course of the Debate seems as if forty ships were to be built, and first to provide twenty. But if no more than twenty, then to lay the most force upon them. Therefore he cannot propose under nine second rates.

Sir *William Coventry.*] Is not convinced that there is a necessity, that every flag should be in a first rate ship. The fleet have none to follow but the flag, and if the enemy govern themselves in shoals and shallows, we must remove the flag to lesser ships. We aimed, that, whatever we do, the ships may be perfected in two years. *Pepys* told you, that the first and second rates can be built in the King's yards only. The *London* was not, but perhaps most conveniently. The first and second rates are most conveniently built in the King's yards—Should we, to build one new ship, lay aside three or four old ones? If the Docks be so clogged, that

no reparation of them can be made, we are then in a worse condition than we were before—He supposes in truth, because not contradicted, that we have of eighty guns more than our neighbours, and from fifty guns, and upwards, our strength is less than our neighbours, to the second rate. Less in the third rate. And 'tis necessary to equal them even in that—That relates to summer service only. Unless you have third rates, they are stronger than you in winter, because great ships then are not so useful. He remembers that they durst not take charge of the first and second rates, when the design was to attack *de Ruyter*—Would be glad we could build forty, but thinks five second rates sufficient.

Sir John Ernly.] Agrees with *Coventry*, that we want third rates. You are offered five second rates. You have four second rates. But what good are we like to have out of four old ships, mostly above thirty years old? Since you have but twenty ships, let them be as strong as you can. You cannot have less than nine of the second rate. And he would have you see the proposals of the officers of the navy.

Mr Boscawen.] Not that you make this a constant rate to supply the ships; this is only for this time. If you are superior in great ships, you are better in all strength, unless you fight on shoal waters. Great ships, if old, do decay, and there is a remedy for providing for them out of the customs.

Sir Thomas Meres.] We had sufficient moneys in the Customs; 150,000*l.* might have been easily had there

Sir Eliab Harvey.] Hopes if we find these new ships, that the old navy may still be kept up, and not lie by the walls. If the fleet be out at sea seven or eight months, you must have second and third rates.

Mr Pepys.] Farness of places hinders expedition of building ships. The Docks are but thirteen, and the slips fourteen. There are but twenty seven docks and slips capable of building.

Sir William Coventry.] Would not insist too much upon the age of ships; we grow not young again, but ships

ships may, and prove as good when repaired as new built. Some ships, in this time, have been so faulty, as to fit to be cast, that is, broken up. One may seem better than the other, but when ransacked thoroughly they cost as much repairing, as a new one building—The other without extraordinary charge went through the Dutch war, and had many knocks, but was unfortunately run aground. The third rates we built, will supply the second rates, being ships of great force, and are winter as well as summer ships, for service. If you build third rates, they will supply the least of the second rates, and be for winter service, which second rates are not found so good for. 'Tis said there are twenty seven slips and docks for first, second, and third rates. But believes he can recollect, that 'tis not fit to build in all the docks at a time, and have sufficient for other uses, as repairs, and building merchantmen. If two years will be employed in building twenty ships, and if you build six great ships, he knows not how reparation can be made of the old ones.

Mr Pepys.] Thinks that some body said "That a ship of the first rate must be two years a building," but believes we may build of one and the other rate one in a year. As for the materials, he knows no body has said they cannot be had.

Sir Thomas Lee.] One day, these ships are in good repair, and another day, old and good for nothing. Notwithstanding they are fifty years old, yet very little timber in them is so old—Most new and repaired.

Mr Pepys.] Three of the old ships have the most part old timber still.

Sir Thomas Meres.] Here we are fighting from dock to dock, and slip to slip. Five is your number proposed to the Question.

Sir William Coventry.] 'Tis plainly and absolutely necessary, that a considerable number of these docks be left free. Will not suppose the old ships not useful, as the old *James*, the *Unicorn*, and *Triumph*. When ships that have been abroad, come home strained, the docks

must be left free for them. The *London* was built at the City charge for a present to the King, and all the reason there was in the world to hasten the building, and it took up sixteen or seventeen months, and timber was then much more plentiful than now. The timber to build these ships is scarce, and yet unfelled. So 'tis not possible in shorter time, and the third rates will supply the second.

Sir Henry Ford.] 'Tis for your honour and safety to give handsomely—Would have nine ships of the second rate.

Sir John Ernly.] Our neighbours have forty ships more than we. If you come not up to them in number, he hopes you will in force. What already are, are wind and weather tight, and in as good repair as possible.

Mr Powle.] Would have you consider what is best for the King and subject. Some little consideration must be had, how this money is to be raised—Fears, by a Land tax, and therefore would not burthen the people more than needful. There must be two years time for building these ships, so that but one of the first rate, and five of the second rate, can be built in that time in the docks. But had the Customs been applied to the use they were given, you had not needed this. The Bill of appropriating the Customs may, for the future, sufficiently do this. If you have a navy sufficient to employ all your seamen, more ships will be useless, and lie by the walls, let our neighbours have what number they will.

Sir Winston Churchill.] Saving money is no argument, when saving the nation is the case. We are now upon the shallows, upon the fewest ships; but we consider not the great man on t'other side the water, the King of France, (*He was called upon to name him, “the French King,”*) who has built great ships so considerably. Would have the greater number put first to the Question. If you put five before nine, if we vote not five, how shall we vote nine? If nine be put first, then five may come naturally.

naturally. If you'll put five, then moves for the previous Question.

Debate upon the previous Question.

Mr Sacheverell.] From sixty guns, and upwards, we have more ships than the *French*. From ninety guns, and upwards, the *Dutch* have none. Of them we have thirty six, and the *French* but thirty four. We are lowest of the second rates; of third rates the *Dutch* have more than we.

Sir John Duncombe.] About twelve tons difference—Gives himself over in particulars to them that know better than he.

Sir Tho. Littleton.] Professes he is not for starving the business. Sees not yet the business over that the officers of the navy can build the ships in that time, and whether they can repair the capital ships, and have dock room. You will in two years end be far stronger, if you build but five ships.

Sir Thomas Lee.] Finds not those that have the honour to command in the navy, tell you that second rates are so useful. Has heard Sir *Fretchville Holles* say, he could do more service in a third rate than in a second, and could keep better in a line. It appears to him that third rates, are much more for the service of the nation than first and second rates.

Capt. Legge.] Understands one of the first rates to be agreed, and 'tis that rate that bears the burden of the fight. The flag must have good seconds, in case of shifts, to remove into—Would have at sea rather more of the third rate than the second; 1300 ton is the least any three deck ships can have—Would have as many third rates as can be in a line; the rest may be for seconds, but not for engagements. When the line is once broken, a three deck ship will better bear a countenance than a two decked. We have better ports than *France*—He is troubled that 'tis thought we cannot build them under two years—But he is sure we cannot cap ships with *France*, who has bought of the *Dane* and *Hollander*,

lander, and built some. If we make not up the number, hopes we may the quality, and they may be built in a year and half's time.

Sir Thomas Littleton.] Our Question is of another nature. We must not neglect the old capital ships, which may put things in a condition and posture, to look an enemy in the face.

Col. Birch.] Is of the number of those that do, and shall do this business, not to save money only, but what is most agreeable to our safety. Thinks that all men, when they engage, consider with whom they are to engage. You are told that God has denied the *Dutch* the benefits of ports for great ships. Our fear then is of the *French*. If they had double the number of ships, yet they can never bring them into our channels. What if a storm happen, they cannot be lodged in our ports—In the channel he cannot draw them—He hopes we shall build these ships in one year, and if need be, we may do it again. 'Tis visible to him that we cannot be good husbands, if we repair not as well as build. If we talk of the money, that's another Question. But of safety, five ships are most for our advantage,

Sir Charles Wheeler.] One thousand three hundred ton is the burden but of one ship that is in dispute between us.

The Question was carried for five ships of the second rate, 182 to 170.

Sir Thomas Meres.] This we build now is 1400 ton for the first rate by measure.

Which passed the Question.

Mr Garroway.] Moves that those five second rates be eleven hundred ton.

Mr Sacheverell.] By *Pepys's* motion we are turning first rates into second rates by 1300 ton.

Mr Garroway.] By an extract out of *Pepys's* papers, there is not one ship of the second rate of eleven hundred ton, but all under.

Mr

Mr Love.] One thousand four hundred ton, he sees, draws on the argument for the rest. Appeals to *Pepys*, whether he did not acknowledge, in his discourse, the first rate at 1200 tons, the second rate 900, and the third rate 700—And said, that, by repairing and girdling, they were made stiffer to bear sail—But never heard that it increased burden to that high rate.

Sir William Coventry.] Remembers and knows ships larger in their rates than formerly, and shipwrights complained of—But so many guns more is still the best ship. You are told by *Pepys*, that some had been girdled, and therefore of greater burden; but thinks the *Victory* is under 1100 tons, and yet she carries more guns than the *Royal Catherine*. Is not this a good pattern to go by? All the increase will be thrown by in winter. The *Victory* is under 1100 tons and 80 guns; and therefore thinks it one of the best of the second rates—Moves that the proportion of the second rate may be 1100 tons.

Mr *Pepys*.] The practice of the seamen is concerned in this. It has been the fault of our predecessors to build their great ships streight, so that they cannot play their guns. For the great advantage of the — * make them, 200 tons.

Sir George Carteret.] When a ship is built, they look at dimensions, heights, and breadths, proportionable, without which you cannot resolve. The *Victory* may be a pattern.

Capt. Legge.] Thirteen hundred tons is as little as any three-deck ship can have; you must have breadth below, as well as above, and scope to vent the powder, else the people will be choaked. When he has been to fight and work his ship, he has found the inconveniency of streightness below. A ship has measured 1100 tons within her girdle, and 1300 without; such a ship will require 700 men, and the decks are so streight they poison one another: Therefore would not have the second rates under 1300 tons.

Sir Thomas Meres.] Would know the definition of these rates. No man could think but that they are, at

* *Sic MS.*

the

the rates we have now—Was willing to have a great ship for the first rate; but no reason to be run high upon every one of them; but they are every day enlarged and girdled in *Pepys's* papers. What can we do when we have no establishment of papers? In none of these papers we have 1100 tons. The *Victory* is not so much, nor near, before girdled. He says, he knows not the end of this.

Sir *Thomas Clarges.*] You are advised by *Carteret*, the oldest seaman in the House, to take the *Victory* for your pattern, which is not above 1100 tons.

Sir *John Duncombe.*] If the *Victory* be so narrow a ship that men are almost stifled in her, mend the fault of the *Victory* now.

Sir *John Ernly.*] The port-holes must be wider; you cannot else traverse your guns, if under that burden.

Sir *William Coventry.*] Has not heard that to be the *Victory's* fault, only some say she is not broad enough; but has heard that the *St Michael*, the *French* ship, is not above four inches wider. If you alter quality in breadth, you may in length also, at this rate; and so make second rates first rates.

Col. *Birch.*] Is mightily pleased with this Debate—Hopes, in time, he may be informed for a higher form. The second rates we have not; but, by former precedent, he abides by it, they were not above 1000 tons at a medium. He must go to *Holland* to fight; they'll not come to us. 'Tis said, "there is not room enough for their men, in a ship of that burden, and the men are smoaked." How comes it to pass that we must have 700 men, and the *Dutch* come to sea with 500 men, in a ship of the same rate? They were over-numbered in the ships, and that makes them be stifled. So many men have lost our honour—And if you intend the best precedent, for burden, as for use, not above 700 men to 1100 ton.

Sir *Charles Wheeler.*] All third rate ships, lately built, and the *Harwich*, are 950 and 960 tons.

Sir *William Coventry.*] Some third-rates have 400 men, and others not 300 men; But he is not for pinching this matter;

matter; is far from it. Some are not 800 tons, and yet good third-rates, as the *Fairfax*. Many others not 600 tons; and every one has its time of use in the battle. He reckons that the business you aim at is 850 tons; but would not bring the less fort to 600 tons neither.

Sir *Thomas Littleton*.] Eight hundred and fifty tons is the Debate. The officers of the yards love to over-do, and over-build—'Tis natural for those of the Navy to over-speak the matter—Therefore put the medium to 850 tons.

Sir *Robert Holmes*.] Hopes he shall have a share in the danger and trouble of this fleet—Suppose you build for yourselves, and 20,000*l.* is ill spared.

Sir *Thomas Littleton*.] Thinks it not a fault to over-reckon. He believes it to be natural. 'Tis an error on the right side.

Capt. *Legge*.] He takes the *Cambridge* and the *Defiance* to be of about ten years standing, and to be 900 tons, or somewhat less—Finds not the *Harwich* much insisted on; she is somewhat over-burdened.

Col. *Birch*.] *Legge* told you, "that perhaps the *Harwich* was somewhat over-burdened"—From what he said, put the Question at 850 tons.

Mr Secretary *Williamson*.] Of the first and second rates, some are higher, and some lower. 'Tis said, if we send to *Algiers*, the third-rates may serve. Those services are more than provided for by the third-rates; but the defence of the nation, in time of war, is the case. All other sorts of services are more than provided for. It is insisted on, that the least sum should be put first, to which this is tant-amount—Would agree to 900 tons.

Mr *Powle*.] When we come to raise the money for these ships, we shall not find the subjects very full. You are told, the *Harwich* is rather over-burdened; and 'tis said, the rest are 900 ton, and somewhat less. The tonnage will be the same which ought to be put; and he believes will go current.

Sir *William Coventry*.] When we give the King money, and not ships, as this infallibly will be money upon the people,

people, therefore the less charge, according to custom, must be put first. Since he had no call to look into the Navy, has enquired into it ; but on his old papers he finds that the *Harwich* was built by contract, and that makes her burden the greater ; and the builder can make his measure more, and have no deeper hold. Some measure 900 tons, as the *Waspire* ; and also the *Cambridge*, and she measures 900 tons, and somewhat better—Not built by contract. But what gain you ? Whether more force ? 937 tons is the *Cambridge's* burden, and she has no more guns than the *Rupert*, which is but 827 tons. In this, much less burden, and the same proportion of guns as the bigger in measure has—As it is the interest of the ship-builder, it may not be amiss that some be 850, and some less—He is for 850 tons.

Mr Sawyer.] There have been many precedents in former Parliaments, and in this Parliament, that the least sum has not been put first. If you are tied up to that, does not hear answered, why 900 is not the fittest proportion. You are to consider what the latter fleet has been ; none built under 900 tons. To take a measure from both ancient and modern rates, the ancient were only fit for scouts. Thinks 900 a medium ; and fears it not safe for a battle under that burden. 'Tis certain 'twill end in money, and it is to be laid out in ships. The safety of the Kingdom is only in our eye ; and if you will have the most serviceable, 900 ton is a proportionable rate.

Sir Thomas Lee.] You cannot find any such Order as *Sawyer* mentions, writ down, and asserted, that 'twas the current Order of the House ; but he never yet heard it till lately ; if anciently, very rarely.

Sir Thomas Clarges.] Observes, by the list, twenty-three ships, third rates, and not above seven of them 800 tons.

Sir George Downing.] If there be not above seven of 800 tons, 'tis all the reason the rest should be supplied.

Sir Thomas Meres.] An old Parliament-man of eighty years of age enjoined him strictly to keep to that Order of the lowest sum first to be put. Whatever is the event

of 850 tons, he matters not at all : He is for preserving the Order ; for he speaks now for the House of Commons.

Sir John Birkenhead.] Challenges *Meres* to produce one line in the Journal of *Q. Eliz.* *K. James*, or *Cha. I.* where the greater sum is not named first, for this reason ; if the greater sum be denied, you may have a second Question ; but if the least be denied, you cannot come to a greater.

Sir William Coventry.] We ought not to depart from Order, till gentlemen versed in Records can inform you farther ; in the mean time, to stick to the usual Order. On the one hand, you are charging the Subject ; and on the other, giving to the Crown. On this ground, votes freely, and would avoid ill manners to the Crown. Suppose 300,000*l.* should be necessary, and a motion be proposed by one near the Chair, and seconded for a greater sum ; and he be put upon the indecency of giving a Negative upon the Crown. When the sum is higher and higher, in every step we proceed with decency. Does it appear nothing, hastily to throw away method ? This Order of the House is worth more than the ships ; it may be double. Put the Question.

Mr Sawyer.] No Journal ever affirmed this to be an Order. He has searched them for your service. He that denies the lesser Question, *a fortiori*, denies the greater. When such a standing Order is showed, will acquiesce.

Mr Cheney.] Has heard say, "the House is not confined to Order, but arbitrary."

Mr Boscawen.] Of various Questions, when they are proposed, that is put which the Chairman shall collect. The usual way formerly was by Subsidy ; now we give by a newer way, Land-tax. Lord Chief Justice *Vaughan*, when here, said, "that if any man moved for five Subsidies, they gave more than they had ;" it being against the old rule.

Mr Waller.] You are upon Order of the previous Question. He has a Journal by him of *i. James* (before the Long Parliament) where he finds the previous Question. Nothing more ancient, nor natural ; not new in its

its own nature, and very natural; a Question, whether the Question shall be put, or no.

Mr Secretary Williamson.] *Waller* says, 'tis necessary, by way of expedient; for one part of the House calls for the Question; another not; so that's the use of a previous Question. But now, whether an expedient betwixt *magis* and *minus* applies it to the previous Question. In this case, 'tis no expedient—In the last Question, those who are for a greater sum, were precluded—He could not say no, for five—The greater sum must be first put, else you preclude all for the less.

Col. Birch.] In the Convention, the longest time, and lowest sum, was the current custom. Believes, now great sums are talked of, we shall be weary of it.

Sir Charles Harbord.] Has heard, that the Question in King *James*'s time, of a previous Question, was to make a modest silence in a thing the House would not grant.

Sir John Birkenhead.] *Harbord* says, "it was in King *James*'s time;" but *Henry Elsing* told him, that young *Sir Henry Vane* was the first that invented it; and he did not believe that tattered and torn book to be the Journal of *I James*, but only mistaken and scattered Notes. *Elsing*, to his dying day, denied it to be a Journal.

Sir Charles Harbord.] *Sir Dudley Digges* gave his testimony of that Journal to be authority, long before *Elsing* came here.

Sir Charles Wheeler.] Moves, as an expedient, that the Speaker may take the Chair, and propose the Question.

Sir Thomas Lee.] The Speaker can take no cognizance of any thing done at the Committee, but what is reported by the Chairman.

Sir Richard Temple.] If any difficulty arises, the Speaker may and ought to take the Chair.

The Speaker.] Suppose the Debate should be of giving 500,000*l.* and it be moved, and seconded, that the sum should be 100*l.* will you put that lesser sum to the Question?

Mr

Mr Waller.] Cannot say that always the lesser sum has been put first, but *plerumque*, for the most part, it has been so, and 'tis most expedient. *God loves a cheerful giver*; so does the King

The Speaker took the Chair, and the Committee had leave to sit again the next day.

Wednesday, November 3.

[In a Grand Committee.]

Debate on the Ships resumed.

Sir Thomas Meres.] Whose interest do we stand up for in contending for this? The peoples. He grants that, once or twice, this Order has been over-run in a torrent of money; the twenty-five hundred thousand pound Act in one vote. Would have that man sent to the Tower, that should hereafter move for such a sum. In the Lords House they have standing Orders and Rules Mr Vaughan and Mr Prynne had once the Chair for Orders, and went a great way in them. There are no records of your standing Orders, but delivered from man to man by tradition. In the next place, look into your books, and you find not what other sum was mentioned with it. The *Irish* cattle and the corn exported; when rates were set upon them; and in tonnage and poundage—Eight-pence and twelve-pence in the *Scotch* cattle; the eight-pence put to the Question first; in that other, forty shillings for wheat, first the lower sum was put, and so rose higher. These are remembrances, not specified by the Clerk in your books, but were passed. 'Tis essential to the good of the nation. He speaks this, not only for the Commons of *England*, but as the most dutiful way of proceeding, to the King, to go higher and higher—Therefore the Question.

Mr Mallet.] Possibly the higher sum was put to the Question, when they were sharp set to raise money to shed blood.

Col. Titus.] The Debate is, whether the smaller sum, and longer time, should be first put to the Question;

which is as much as to say, whether you will not make the charge as easy upon the people as you can. Who are their representatives? He never heard it contradicted till yesterday, and we were told, the greatest sum to be put first was a standing Order, from the Chair itself, yesterday. He believes we shall not find it in our books, that the Question first put that is first seconded, is yet taken for granted to be an Order. 'Tis his opinion, if it be not a standing Order, to make it one: The rules of prudence advise the method. Suppose you build a house, and you call workmen, and, after the dimensions and figure are taken, one says, he will build it for three, another for five thousand pounds. If he be cozened two of the five, believes the workman will not refund it again. Suppose a war with *France*, and at the same time one moves for five, another for forty thousand pounds, and an army is raised, drums and feathers in every street, and *France* immediately makes a peace with us, and 2,500,000*l.* given for it; it may make no Parliaments in *England* for ever after. All the world knows, that, if five be not put, then in the consequence ten must.

Sir *John Birkenhead.*] 'Tis moved by *Titus*, "if this be not an Order already, to make it one." A standing Order must be either in the Rolls, or the Journal. One *Vowel*, a Western man, published his observations a hundred years ago: He was eight times a Parliament-man, and Chairman to the Committee of Privileges. He made a book, and quoted his observations out of the Journal. After him, *H. Elsing*, 18 *James*, showed his book to Mr *Selden*, who needed his relief. If one Order, or one word, be in those books, that the least sum should be first put, would have it showed him. He has read all the Journals, and not one Journal has a word of it. *Scogell*, the Clerk of the Rump Parliament, does say, it has been done; but no other gives the least shadow of it.

Mr *Powle.*] Has heard this Order so often cited, and so little contradicted, that, since this Debate, he has enquired into it. Finds, that if any fear or terror should be in

in any man, to be ill represented to the King, therefore he is for the lowest sum, so not to give a negative to the King's desires, thereby not to undergo any harsh constructions—He principally rises up to tell you, what precedents former times have met with, but have been very rare. In Q. Elizabeth's time, there was no Question put of more or less, but the sum was granted without contradiction, what was asked, such was the felicity of her times. But in the beginning of K. James, (3 Ja. 14th March, Friday) there was a Debate about a Subsidy, and several motions for four Subsidies, and eighteen fifteenths. Some were so resty they would give none at all. There was a long Debate about it. The first Question was, "whether there should be a general, or a particular Question; a particular sum, or whether Supply." The next Question was, "Whether the King should have a Supply?" It was carried in the affirmative. The third Question was, "Whether a Supply by the usual way of Subsidy, or fifteenths?" Carried in the affirmative for "the usual way." The next was, "for one Subsidy, and two fifteenths"—Through all these gradations, the least charge was first put—to what is said, "that thus men cannot clearly have their Vote" on the Question, whether put or no, there follow clear Negatives and Affirmatives. Of later times, it has been otherwise, but overborne, unfortunately, in the great sum mentioned; which he hopes he shall never see again.

Sir Anthony Irby.] Nothing does the King more honour, than an unanimous sound from hence. Will not say, for these 47 or 48 years, it has been a positive Order, the least sum put first. But it has been a constant custom, the least sum first put.

Upon the Question, [the House did resolve and declare it an ancient Order of the House] that the least sum ought first to be put [and the longest time] to the Question—To be a standing Order for the future.

Sir Thomas Clarges.] Moves to have two or three gentlemen to withdraw, to preface this Order, with the reason of making it. The Order else is but an oral tradition

tion—The Grand Committee report the matter resolved, to the House, and no particulars are entered into the Journal, and so you find no written Order in the case.

The House agreed with the Committee, that one ship of the first rate should be of the burden of 1400 tons, and five ships of the second rate at 1100 tons.

Sir *Henry Capel.*] Moves for fourteen ships of the third rate, 900 ton measure.

Sir *William Coventry.*] This Order of the House made great Debate yesterday, and now is settled to your satisfaction. *Capel's* motion is no violation of the Order, since you have not two sums in motion before.

Resolved, That the third rate ships be 900 tons, one with another.

Mr *Pepys.*] To the value. One thing is worth your consideration, if you build one, two, or three—But the inevitable price of building so many—Greater number are of sizes, and must be built by contract—Few, in the King's yards, of them. In building of a house, dimensions, thickness of walls, and timber, are considered; the bricklayer else may cheat. He proounds, for the first rate 15*l. per ton*, for the second rate 14*l. per ton*, and for the third rate 10*l. per ton*. The *Harwich* was built for 9*l. per ton*. But there is an inevitable necessity of increasing the rates of prices, when so many are to be built.

Sir *Thomas Meres.*] Has heard often, that the *London* was built for 12*l. 10*s.* per ton*. He believes that 13*l.* will do; but rather than do it scanty, will move for 14*l. per ton*, though he be checked for it.

Mr *Spry.*] Ships of war ought to be much stronger, and more costly built, than merchant-men—Therefore moves for fourteen ships of the second rate, at 15*l. 10*s. per ton*.*

Mr *Pepys.*] The *London* was but a second rate ship, but a great one; 1300 tons.—Built by contract, but not carefully overseen.

Sir *Eliab Harvey.*] Merchants tell him, 14*l. per ton* will do it extravagantly. The *London* was so good a ship, that they took her very keel to build upon her.

Sir

Sir *John Ernly.*] This is the worst money you can save. For instance, in the *Charles*. Though old decayed timber be cheaper, yet what you save in this being lost, he would have it at 15*l. per ton.*

Mr *Pepys.*] No merchant can be a proper judge of this work, 'tis so different from their way of building.

Sir *Thomas Clarges.*] The *Edgar* was a third rate, but had the tonnage of a second rate; and cost but 9*l. per ton*, built at *Bristol.*

Sir *Thomas Lee.*] We may conclude, that 13*l. per ton* will do it: But observes, that the reasons, one day, to raise your number, are the same another day, to raise the sum. He supposes they build these in the King's yards, and 'tis not for their interest to build ill; and as you bargain, you may save; for you are like to have no farther account of your money.

Sir *Nicholas Carew.*] The raising in this will be a reason for raising the whole. It may be about 100,000*l.* in the matter.

Mr *Boscawen.*] If you buy timber, what will not go to the building of great ships may serve for the less. The more houses you build, the cheaper will the brick-layer undertake the work, because his materials may serve for several uses. In building, you make articles, and have satisfaction for non-performance; and he ought to be defaulted in his price. When it may be done for 8*l. 10s.* he wonders at the confidence of the motion for 14*l.*

Sir *Thomas Meres.*] Finds the 8*l. 10s.* not denied to be the contract at *Bristol.* He is for building at *Bristol*, that can build so cheap. He spoke it, upon Sir *John Knight's* unwillingness to build at *Bristol.*

Mr *Pepys.*] As to that one ship, the *Edgar*, whatever is thought of the difference of *Bristol* and the Yards, the additional charge of guns, keels, masts, and yards sending to *Bristol*, with the hazard of winds and weather, costs the King much more *per ton* than is mentioned. She must have more time, and lie on ground so long,

C c 3 that

that she may break her back before she comes to *Portsmouth*, and may cost the King above 3000*l.*

Mr *Sacheverell.*] Never found but 11*l.* per ton was extravagantly great.

Col. *Birch.*] 'Tis spoken of building in the western ports, at *Bristol*. The more diffusive this work is made, the better it is for the nation. Hears spoken of the forest of *Dean*—And no timber to speak of downwards. 'Tis an old maxim of his, that interest goes a great way. Has had occasion to ride through the forest of *Dean* (the bravest echo of woods he ever heard) 'Tis said, in the *Lee Baily*, there the timber is unfit for shipping—For half a mile together, he saw not one in fifty decayed, and of great height—At a venture, would have given money (when he saw the certificate of their unfitness for shipping) for a thousand of them. He came soon after, and saw thirty of them cut down, in the fashion of that country, four feet from the ground—They said they did it for some extraordinary occasion; but 'twas given for cord-wood—They were of great sizes, between four and five feet over in diameter, and as fine, pure, and true oak, and as well quartered, as ever he saw, But he did not find, it seems, that 'twas for the interest of those about *London* to build ships there. This timber is within three miles of a navigable river, which may carry it to *Bristol*. He never saw so fine a sight as the young wood; but there were eight or nine score cattle in it. Why then should this place, so natural for timber, be thus destroyed? And wonders that certificates should go abroad thus

Mr *Somerset Fox.*] Is told, by credible persons in the country, that there is not timber in all that forest to build two second rate ships, and two third rates.

Mr *Pepys.*] He speaks not by rote what he has propounded; but of all species of materials, by the opinion of such as are as much masters of husbandry as the judgment past. He speaks from Sir *Anthony Deane*, and Mr *Johnson*, and would have them give you an account, and be sent for.

Sir

Sir Thomas Lee.] Wonders that Mr Johnson should be moved to be sent for, who is to build, and may set the dye upon you. For the first at 14*l.* per ton, and the second rate at 12*l.* This is a great price.

Sir William Coventry.] As it is no man's interest to do it slightly, so 'tis ours not to do this work scanty. The *Richard*, which was afterwards the *Royal James*, had a stem-piece defective. He saw it in the yard-place, when one bought it at an extraordinary rate. He asked Commissioner Pett, how much money it would cost to put that piece into a ship? He said, some thousands of pounds. The very putting this piece in speaks this, to go as far as you can, to have all well done. The *London* now is not of the same dimensions the other *London* was, and the City gave 12*l.* 10*s.* per ton. That ship was built in a time of war, and the charge of workmen may come near the price of scantiness of timber—Therefore moves for 11*l.* 10*s.* the price of the former *London*.

Mr Pepys.] There is a worthy Member in his eye of that profession [*Wright*]; refers it to him, whether the just value of that ship was 1100 tons.

Mr Wright.] No shipwright will undertake it; 'tis too great a mark for him.

Sir Thomas Meres.] Let it be put at 12*l.* 10*s.* because moved.

Resolved, That the second rates be at 12*l.* 10*s.* per ton.

Third rates debated.

Sir William Coventry.] Doubts not but timber will rise upon this occasion; but by the time some ships are on the stocks, timber will fall. It must come from foreign markets, and time will make it cheap. The *Harwich* was built by contract, at 9*l.* per ton, and the last was so built.

Sir John Ernly.] He has the papers of accounts from him that built the ship *Harwich*. If any man will build it for 10*l.* per ton, he'll pay for it.

Mr Wright.] But one ship was then to be built ; and so being but one, the price was raised.

Mr Pepys.] Sir *Anthony Deane* assured him, the timber cost twelve-pence a foot for the *Harwich*.

Sir Thomas Lee.] Wonders what ground there is to believe that the rising of timber should be so great, as a tenth part—These men, that hope to do it, raise it—There is no rule to go by, but what has been done before. You cannot raise the price one tenth part, unless the carpenter, and all other workmen, raise proportionably.

Mr Pepys.] Would ask, what merchants give for their own ships *per ton*? Some of theirs are of five and six hundred tons burthen. Appeals to them, if they pay not from 8*l.* 2*s.* 6*d.* to 8*l.* 6*s.* 8*d.* *per ton*.

Sir Tho. Meres.] 'Tis granted that the *Edgar* was built at 11*l.* 10*s.* *per ton*. It comes in the total to a very great sum. Unless for better reasons than yet he has heard, would stand upon 9*l.* *per ton*.

Mr Wright.] Merchantmen of five or six hundred tons, come to no less than 8*l.* 10*s.* *per ton*.

Mr Pepys.] Increase of scantlings rises, and dimension rises.

Sir John Fagg.] Though he is no ship-wright, he has been a broken timber-merchant these seven years. You are told of a difference of prices. 'Tis true, there is a difference between knee-timber and ordinary compass pieces ; but finds no difference betwixt great and small pieces proportionably. But 'tis said, “ There will be a rise of timber, upon building these ships ; ” but he thinks not. In the war, merchants have lain by the walls, and not been used ; but now they begin to build. Ever since timber has borne a price, it has been preserved ; and, on his conscience, he believes there is twice as much timber in his country [*Sussex*] as will build all these ships. He knows a tree that has grown a foot in the diameter in thirty years : What may that come to in time ? So that there is no scarcity of timber ; and would put the Question for 9*l.* 10*s.* *per ton*.

Mr

Mr Pepys.] Has bought many a load of timber at 30*l.* per load, and has given 50*l.* but difference of figure is much in the case. He can buy ordinary house-timber at that rate of 30*l.* But if *Fagg* will furnish him for ships, he will give 55*l.* a load.

Sir John Fagg.] Has called himself a timber-broker—There is a sort of knee-timber, and several other names and variety of pieces—How they buy in the King's yards, he knows not; but how he sells, he knows—And they come not near *Pepys*'s price.

Col. Birch.] Observes, the steps you have gone have been with the usual frankness and freeness of the House of Commons. 'Tis said, the *Harwich* was built at 9*l.* per ton. When the House is making the King a present, would rather over-do than under-do the thing. Do it to the utmost; you may gain your desires from the King: Pray then to have it well done; put it to 10*l.* per ton.

Sir Thomas Meres.] Every ten pounds is ten thousand to the people. Has heard, that 850 tons burden is a good ship. It is nothing, when we talk of tons; but we know the money. We have thrown away 6000*l.* already this morning; and if the thing be pressed, will give but 6000*l.* this morning.

Sir George Downing.] If you were giving so much for hoods and scarves in *France*, that would be giving it; but this is for your safety; and what you do, do generously—Moves for 10*l.* per ton.

Sir Tho. Lee.] Would have gentlemen consider, that now you are making a bargain of ill husbandry for the Crown. Has heard that rough timber is a fifth part of the cost—A strange way to persuade you to be frank!—But if to raise money for other uses, if there be an overplus of 40 or 50,000*l.* you'll hear of no more ships; and if it goes into the Exchequer, he knows not what may become of it, by the former dealings there.

Sir Charles Harbord.] This money is not a present to the King, but *pro salute regis et regni*. Therefore would have it complete.

Sir

Sir Thomas Meres.] This is giving 1200*l.* more to the shipwrights, who will measure at the highest. It may be 40 or 100 tons more by measure. But he dreads another thing. There will be no end of building ships, if we appropriate not the Customs. They being appropriated will build all the ships for the future, and perhaps, they may do so now. You are not to lay a foundation of a body of shipwrights, to be so raised as the brewers were, to be worth 40,000 or 100,000*l.* a man. *Ergo,* He insists upon 9*l.* 10*s.* per ton.

Sir William Coventry.] Will not conclude that it cannot be done for 9*l.* 10*s.* because a shipwright will not undertake it. Horse-coursers never will come near the price they will take, till they see you will buy, and money is stirring. You are told, the last ship was built for that price. Possibly prices may now rise, on the first notice, but believes they will fall afterwards, when we shall have timber from foreign markets. It is a notable deduction in telling you the value of timber—It cannot suffer much for raising—Upon your old rule, now established, would put the less sum first.

Resolved, That the third rates be at 9*l.* 10*s.* per ton.

Sir Tho. Meres.] Put the Question upon the whole valuation at the rates mentioned.

Mr Pepys.] If for the hulls only, he agrees with the Motion, but for the entire ship differs.

Sir Tho. Meres.] It it be expected that we must find stores for them, we have sufficient, and can make it out that the Customs are for the whole. Our business is, building the King so many ships; but as to ropes and sails, 130,000*l.* a year out of the Customs to improve stores, in three years will plentifully do this, and to spare. But as to the money, (not but that you have enough for all) would have that now upon the calculation agreed upon.

Mr Pepys.] Appeals if there was a ship ever used, unless with all her furniture, as sails, &c. Without it, 'tis to be understood like a coach without wheels.

Sir

Sir Tho. Lee.] The Question is, Whether the shipwrights that contracted, did provide all things besides hulls.

Sir Tho. Littleton.] The last Session, the Customs being appropriated were thought sufficient to do all these things now, and for the future. Deserves no credit, and shall not have it, if not made good that the Customs to be appropriated are 400,000 *l. per ann.*—The ordinary charge of the Navy 250,000 *l. per ann.* the Ordnance 10,000 *l.* makes the ordinary charge of the Navy in peace 200,000 *l. per ann.* Shall the rest of the Customs be thrown away? But say some, “The King shall want bread”—Would have them put together—Not as the *two in a field, the one taken and the other left* (in the Gospel)—We were told “that the anticipations of the Customs were between 7 and 800,000 pounds, and if not taken off, the King would want bread.” He fears we have been abused in it. There is one anticipation of the Excise, the farmers fine 200,000 *l.* and the chimney money, though the tallies are struck for it, yet it hinders not the course of the revenue, for whoever takes the farm next, the fine is continued, like a fore rent in a man’s estate; so that his anticipations hinder not the revenue, and this hinders not the King from bread—Anticipations to the Navy 100,000 *l.* and 40,000 *l.* of that is over put in hands. So this is to be deducted. A great part of that of the Excise is not spent, besides on the rest 40 or 50,000 *l.* unspent, and the great noise is about 250,000 *l.*—For the guards and other charges of the Government, 150,000 *l.*—48 unappropriated—And that of the Wine duty—Does not mention this as money that ought to be employed—In all 700,000 *l.* Excise, with the rest of the revenue 900,000 *l. per ann.* and this no immoderate calculation. There is another great sum in *Ireland*, The standing charge there is 170,000 *l. per ann.* and the standing revenue is 240,000 *l. per ann.* Thus this great noise of anticipations—

tions—And by the calculation he has made, you may judge whether the King cannot live.

Mr Leveson Gower.] The point is “Ships” or Hulls.” Put the Question, that every man may show his inclination.

Sir William Coventry.] Gower has given him an invitation of speaking, but was more inclined to speak then than now, because he knows not how the Committee will like diverting this Debate. What he intended before, was on the single point of building ships.—Consider whether straining points has been for your service—More readily complied with, when not struggled. ’Tis said, that building of ships is rigging and fitting them. Those which *Pepys* delivered in the list, he called “ships,” though not fitted. Would know, whether these contracts mentioned were for rigging—But they trusted not that in his time to contract, mens lives depending on them. That was not done by contract. The King, in his Speech, asked of us “building of ships,” and you voted “building,” and it can be understood nothing, but “hulls out of the contractors hands.” Will a man say, guns are a part of ships? Many ships go to sea without guns. He does not tell you what is his judgment to do, but would only clear the matter. *Littleton’s* discourse may be of great use; he hopes, at another time more seasonable. All men are for appropriating, if their own hearts were consulted, and if the King cannot subsist without the Customs, none are for it. Would now let the Speaker take the Chair to adjourn the Debate.

Sir John Duncombe.] Would defer the Debate to some other time, foreseeing that many things would fall into it. You are told “that the anticipations upon the Customs, are between seven and eight hundred thousand pounds;” upon examining, fears they will prove more. He will not pretend to be so knowing, as the officers whose business it is, who will inform you the Excise is so anticipated, that the King has no profits of it. Would have things seen and examined, together with that of *Ireland* and

and would defer it to another day, that men may be prepared in it.

Sir Thomas Littleton.] Is informed, that some are about to give now 500,000 *l. per ann.* for the Excise. There's money reserved out of the Excise that comes neither to the Exchequer, nor Privy purse.

Mr Sacheverell] Is for going forwards now with the business in hand. Would dispatch it as soon as may be—Never thought the *quantum* more than mentioned—That then we may go on the other business. Else, if not, he fears we shall have a slender account of this Session.

Sir Thomas Lee.] The *quantum* of money is the same in the Exchequer, as when the last war was made without Parliament. He thinks that 210,000 *l.* may be sufficient for this purpose.

Sir John Hotbom.] The last Session, and till now, we heard nothing of rigging and equipage, and what you give more than is asked, the country will not thank you for.

The Speaker.] The Question is, “whether the intention of the House be to give money for hulls, and no more.” You are told, you have a good fleet, but not comparable to your neighbours. If your neighbours have no rigging, nor guns, then you are as well as they. Without it, you throw away your money. As the state of the revenue now is, you will let these ships lie by the walls. ’Tis an easy thing to take impression so as to do things out of order—As for the charge of the Navy, we are now in peace—Those that say, there is an ill management of the Navy, say generals, but no particulars—But selling the offices of the Navy has occasioned this—(reflecting upon Sir William Coventry) Since that was done, there has been such a herd of vermin in the offices, that are not yet weeded out, that 400,000 *l. per ann.* is the Navy charge. The last two years it has taken up more. The tonnage and poundage is 500,000 *l. per ann.* the whole but 600,000 *l.* with the additional duty upon wines. If a measure

sure of the revenue be taken by this year, 'tis a mistake. Would not farm it so after this year's product. Whoever does it, will have an ill bargain. We are in peace, and all our neighbours in war. *Littleton* is as much mistaken in the revenue of *Ireland*, as he is in that of *England*. He tells you of 100,000 *l. per ann.* of it that comes into the King's purse. The story is like a gentleman that made a horse-match, and took money of his friends for shares: He won the match, and what with paying his friends shares, and the reckoning for the entertainment, he spent more than he had won by the match. The establishment-money goes from hence to pay the charges of the Kingdom, and if any man doubts of it, would have a time appointed for the perusal of the papers of the revenue, which you have so often rejected.

Sir *William Coventry*.] Something fell from the Speaker, which concerns him to speak to. How necessary it was for him to make that digression, he leaves you to judge—Nothing of this matter required it. He avoided that of “selling of places,” in all the course of his life, under an awe of himself. 'Tis no news to this House, that he did receive, (when in the employment of the Navy) such profits (as he is able to prove) as were taken in the last King's time. But as he could show such long lists come into the Navy that gave him not a penny for it, and yet received profit, so he was the first that moved for reformation, and they were put out, and had pensions for it. He defies any man to say that there was the least protection of them from him, or influence to do amiss. He denies it, and defies any man to say the contrary. He supposed the thing had been gone and past, but so much having been said, he thought fit to say what he has said. He hopes the payments in the yards are mended. But those “vermin” mentioned never amounted to a hundred part of the pensions (*meaning the pensions paid to Lord Anglesea, &c.*) paid by an honourable person, whose place is now in the Speaker. When those papers shall be produced, the

House

House may judge whether the King hath any benefit by that honourable truck. But since so much has been said, he could not be wanting to his own innocence to say what he has done.

The Speaker.] The rubbish belonged to another man, that was laid at his door—But says, the buying and selling of offices has been as mischievous, as felling of powder in fight. But there is no such thing as “trucking”, mentioned in matter of fact.

Sir Thomas Meres.] Suppose that another man receives that pension mentioned, that has right to the place of Treasurer of the Navy. But after all this, we pay the reckoning; we pay the anticipation. But now is not a time for this. Will make it good to reasonable men; if the House will go along with him in it, will make it out, that there is money already for these ships, and a full revenue, and we need lay no money upon the people. But this is not to be done without the help of the House to back him. The revenue is not known, and this is the great skill of matters now to conceal it, and ours to find it out—if men will go about it, they will find such things discovered—but he is for looking forward, and mending the matter—but this Debate is not so much out of the way; this must grease the wheels of this appropriating the Customs. If they come in fairly, above 100,000*l.* over and above the expence of the Navy—’Tis a proper Question now to provide these hulls, and we will talk of rigging to morrow. If you put the Question in words “not exceeding”—If by a Land Tax assessment at 70,000*l.* per month, would not have one month to make up a short 10,000*l.* since ’tis not exceeding 208,000*l.*

Thursday, November 4.

[Debate in the House.]

Sir William Coventry.] An unhappy thing * fell out, the last Session, at the Grand Committee, and the ne-

* The disorder at the Division of the Committee, about the English in the French service. See p. 128.

cessity and expediency of the thing bore out the Speaker's irregular coming to the Chair, though 'twas then excepted against, and we not agreeing yesterday, gentlemen desired to settle a rule in the House, to proceed by at the Committee—No man can tell you but that the Committee can come to regular steps how to proceed, and till the Committee find a difficulty, 'tis not for private men to take upon them your business, and report it out of the hands of the Committee. From the reason why the Grand Committee are not tied by rules of the House, which admits not so frequent speaking—which every man now being master of the matter by a thorough Debate—And then the House is in a capacity to debate thoroughly—Therefore to preserve Order, and though occasion to resort to the House is necessary, (for else you report and take it out of their hands, contrary to the intention of the Committee)—therefore 'tis necessary that you leave the Chair.

Mr Sawyer.] The difference is very plain—What is resolved is reported by the Chairman, but, for any obstruction at the Committee, 'tis necessary it should come from a private gentleman. Misdemeanors and obstructions at Committees, private gentlemen may inform you of. Consider farther, that the Question arises from the interpretation of your Order. How can they interpret your Order, when they are divided in opinion? They have mistaken your Order, and shall not a man inform the House of it? Therefore 'tis not only the duty of the House to explain the Order, but there is a necessity. But, 'tis said, “An Order made yesterday, was not the same objection made yesterday”—After the House is possessed of the Debate, you must put the Question, whether they will proceed in the Debate.

Mr Vaughan.] It must be resolved at a Committee, before it can come to you, else every particular man may start up, and so no end of business.

Sir Winston Churchill.] Stands up to demand his own right, as a Member, to vote freely. 'Tis said, “That we should be all reporters, at this rate:” But what is prayed, is to explain the Order of the House to the Committee.

Committee. If twenty ships be not complete—'Tis an unreasonable thing for him to strain “Hulls” to “Ships,” if not explained. Therefore prays to explain your own Order.

Sir *Thomas Lee.*] He told you he thought the House was for ships. Has not the same gentleman liberty to propose a greater sum, if he pleases, towards them? By his argument, he will bring the thing into the House, before it has been at the Committee.

Sir *John Duncombe*] After you came to the sum 280,000*l.* you came to a Question, Whether the ships were provided for fully by that sum? But 'twas said, “that was for Hulls only,” and that began the Debate. 'Twas not to limit the sum, but that your money should not be diverted—He can only speak his own sense, and could not understand it any way but for “Hulls,” and thought it a sum this House might proceed upon. He meant the Vote so, and thinks the House did, “twenty ships, built and fitted.”

The Speaker.] It being desired of the House to interpret the Order, moves that it should do so, and nothing else.

Sir *Nicholas Carew.*] The case, as put by *Duncombe*, is not, whether you will build ships, but whether you will give 600,000*l.*

Sir *John Duncombe.*] Because he has changed his opinion from thirty ships to twenty, wonders it should be so inferred upon him—He took the measure of what those ships would cost—He moved “twenty ships” fairly, and that they should be “hulled and equipped.”

Serjeant *Maynard.*] Whatever the Committee votes is not to be concluded finally resolved; it must come to you, and 'tis now brought to you. When there is an ambiguity of “Hulls” only, or “fitted out,” to save your time, you ought to explain it by a Question.

Sir *Thomas Meres.*] Sees that the word “Ship,” whether it may mean and intend “Guns and Stores,” is the Question; because he has heard these words mentioned. The word “Ship” may, or may not, intend

“ Stores and Guns.” If it may, ’tis fair to go to the Committee; if it may not intend so, then you go to vote a new thing, a new charge; which if you can do, before it has been at a Committee, and brought by them to you, ’tis altogether new; and farther, before we part with our money, we may speak more than once. Two words to a bargain. He takes the Question to be, whether the Speaker shall leave the Chair, or not leave the Chair.

Sir Robert Holmes.] Is willing to see “ Hulls” and would be glad to see “ Ships” finished. The Vote is a good brave Vote, but you thought not then to put “ Ships” before “ Hulls; nor Hulls—” and stop there—He finds, whoever builds Hulls must be at as great a charge for other materials as for Hulls, and sees not how you can come up to your Vote, unless you provide masts, sails, cables, standing and running rigging. He therefore moves to double the sum for your materials, and bring them to your Hulls.

Mr Secretary Williamson.] The dilemma may be, and may not be, both; the nature of all words of a double sense; as this does mean either of them, and can be explained no where but in the House, from whence it came.

Sir Tho. Meres.] If it may mean it, as well as ‘not, he says, then it may mean it.

Mr Secretary Williamson.] He takes it in one sense, and *Meres* in another—Would know in what sense the House means it, where the word first began.

Sir Thomas Lee.] The word began in the Committee, and it was possessed of it. Pray know the Committee’s meaning.

Mr Piercy Goring.] Would have no tricks put upon ourselves, nor cheats upon the nation. We intend ships serviceable for defence. He that is not a friend to both, is a friend to neither. Building of ships, and not making them useful, is like those who declared for defence of the King and Kingdom in the late times of rebellion. (*That expression gave offence.*)

Lord

Lord Cavendish.] When the Vote was for twenty ships, they were intended serviceable; else, so much money is thrown away. And we throw away the nation's money, when we give, and there is sufficient to do it.

Mr Waller, who sat on the steps, upon the Speaker's calling to him to sit in his place, said] Cuts are made in the seats for steps here in the House. He knows that in the Long Parliament, steps were seats, and seats were steps, as in an amphitheatre. The Rump put backs to our seats, and the steps, now new made, were seats; and he desires there may be some Order made in it, if steps must not be seats.

Sir Tho. Meres.] It interrupts all Debates—if one speaks not to your liking, Mr Speaker, they are no seats, or seats as you please. He holds that the steps are no seats,

Sir William Coventry.] Thinks that the thing is not so light, The greatest misfortune that ever was like to befall us, last session, at a Committee, was about these seats. There was a doubt whether a gentleman was told twice. There was then a doubt, and there may be a doubt, and it had like at that time to have been fatal. Would have a Question about it.

Sir Tho. Meres.] A man ought not to be disquieted in his seat. A man may be disquieted in this passage, therefore 'tis no seat.

Mr Swynfin.] If this be, you will lose all your labour at a Grand Committee. The first occasion of this was from the King's Speech. The expression in it, of "money to build ships." The consideration of it you referred to a Committee, which was "building of ships," who proceeded with great care several days. 'Tis said, "that by ships" "rigging, stores, guns and tackle are now meant." But to his best understanding no gentleman said any thing of "stores, guns, or tackle," when the several rates were mentioned. But the words were taken as barely delivered to you. If it was intended, was it not then a proper time to have said it? Nay, to tell you what is meant now—Was this ever explained, or desired to be explained, at the Committee? The Committee did not at all doubt the meaning of it; their affirmative might else have been expressed. But in a

contract between man and man, the shipwright, by so many "ships," means "his work" only, but not "tackle and rigging, guns, &c." being things not of his profession. In the sense of the law, he would take these words upon contract. He sees we shall equally divide in senses. Those that would have words so understood, would have this a new charge, otherwise we shall engage in a blind bargain. Most of us understood not that charge. Therefore would refer it to the Committee to consider what sum of money we shall give to answer the King's desires for building Ships.

Mr Waller.] You will never set us right, but by a Question. The Question is now about the Order of the House, "Whether we shall send it back to the Committee." The doubt of the Committee is to be determined at the Committee. If this be Order, always *a fortiori*. Here in this case, 'tis matter of supply, and by a standing Order the Committee is the place to name it in, not here, else you break the standing Order. The sum named at a Committee may be determined there, and, by Order, no where else.

Col. Birch.] 'Tis visible to him, there are not so many ships wanting, but some would have them "clothed and fitted." He thinks it will prejudice the busines itself. For, it may be, the Committee will go farther than is already proposed. 'Tis orderly to go to a Committee.

Sir William Coventry.] Does acknowledge that, by the Debate, he believes the House has a mind to determine the Order. He knows not whether it is his luck to be understood rightly, but intends fairly. To give new directions, an Order may be apprehended, that if the thing be abstruse, and may file off from some outdoors information, some may take advantage, and say it needs explication, and it may be of dangerous consequence. On the other hand, there is some apprehension that there lay an obligation from the signification of the words "rigging, &c." though the Committee came not to a result, and as for arguing as if the desires of some were totally to cut

cut off all that, he is one that thought it did not put that obligation upon us, and desired less to strain things on one another, and have better effect of what is desired—Another thing—He would not be prejudged by what he said either way, but would have gentlemen understand it a little farther. The rigour of the words causes these apprehensions—As if words laid no obligation upon us—So the Committee is at liberty to debate it. But to proceed by a trick, to say one thing in the House, and another thing at the Committee, forfeits his reputation. All that is asked of the House by the King is referred to a Committee. The prudential part goes on with the strictness of the letter of demand. The Committee is not excluded the prudential part. He is not of opinion to provide ships never to come off from the stocks. Will any man advise you to launch the ships from the stocks, before they have cables and anchors, to ride by? 'Tis the prudence of the intention not to have ships to build, when war is declared, and the same prudence will lead the House—He will likewise move to do the rest. If still it should fall out at the Committee worse than gentlemen would have it, it must at last come to the House, and believes there will be faster dispatch at the Committee than here, because freed from the fear of an inroad into breach of Privilege, and Order of the House. For instance—if some moved 8 and some 900 ton, the House interposed not, whether 8 or 900, but to settle the Order. As soon as that was done, the Committee was melted, and did not mind how cheap—The night before we talked of 900—We gave it all. You shall find him the same man at the Committee as in the House. Try us and go into a Committee; the House is master of all.

The Question being put, Whether the House would give any farther instruction to the Committee, it passed in the negative 163 to 157.

The House then resolved into a Grand Committee. Sir John Trevor in the Chair.

Sir William Coventry.] We shall have an account, at our next meeting, of what is spent upon these ships; and he confidently believes that no man in the House will fall short of supplying the King farther, in case of any war, or other emergency.

Mr Pepys.] From the success of the methods he has taken, he is encouraged to think, he shall have acceptance of what he shall now propose. In the account he gave, he never meant "victuals," nor ever meant "men." This he says, that you may be free, and without apprehension of great sums in reserve. On presumption that the "Hulls" are admitted, will offer you no more for "rigging and sails" than 70,000*l.* There remain "guns," and requisites to them, as "carriages," &c. and so if you please to determine whether "brass" or "iron guns," or some "iron nailed in," an invention of Prince *Rupert's* of the same goodness and strength with brass guns, he shall be able to give you their value.

Sir William Coventry.] *Pepys* proposes 70,000*l.* for "tackle"—Supposes he means such sufficient stores as the ship may stay abroad with a reasonable time, and do service. Would willingly know whether the Committee intends to fit these ships for hand strokes—Buying guns is the great matter. Iron guns are 60*l.* per ton of the new invention, and the other sort 20*l.* per ton. He has been told that iron guns, of the ordinary fabric, are less in value, but whole cannon more. Demy cannon, and under, are of most consequence. Cannon is of great weight to the decks, and more charge. 'Tis his opinion to adhere to the old sort of guns, and you save almost a thousand pound by it. The old ones will cost 37,000*l.* He has seen the new way of guns, and there is great probability of them; but would not put the nation to the hazard of an invention. Was once told of an invention for boiling of water with much less fuel than is commonly used. The Brewers catched at it, and agreed for it; and a tryal was appointed, and a cauldron provided. The inventor's notion was to have a fire made in the midst of the water, which would sooner

heat

heat it. A great pipe was placed in the middle of the diameter, and a fire was made in the pipe, and the water boiled. All said, it was an admirable invention; but an old brewer said, “The invention seems good, but he would try in the bottom of the cauldron, whether the water boiled there or no.” But there the water was cold. This has still given him apprehensions of new inventions. He has heard of an armourer at the *Hague*, who had found out an excellent way of tempering iron for defence and lightness, and the arms musket-proof. And, upon tryal, they were proof indeed, but the temper wore out in a year or two, and would not perform what they did at first. This invention of guns may probably be good, but cannot learn any thing of their tryal in battle by knocks, and heating, and cooling, which is not to be known till tried. Old guns we know, and he would make preparation of guns of that nature.

Mr Sacheverell.] Apprehended that when he had voted “building of ships,” no talk would have been of “building guns.” Let a sum be named.

Sir William Coventry.] Since it is not done, he offers it. *Pepys* said 110,000*l.* guns and all; but in that proportion, ‘tis not necessary; nor yet fit to provide fails and tackle, unless for the rats and mice. Many gentlemen cannot keep their cloaths from them—“Whole cannon” beginning to be declined as not thought so useful! But in consideration of humanity to ourselves, for our refreshment, having sat so long, he will once do a bold thing he never did, will name 110,000*l.* to do all to the full in a round sum, and would speak once for all—Moves “That the whole may be 300,000*l.* for these ships.”

Sir Nicholas Carew.] He thinks this to be a great sum, the poverty of the nation considered. You must think of how many ships are already on the stocks, not finished, which will be reckoned into the number of these twenty we give. Then, if so, all that money will be refunded, and the King receive it again. Therefore

considering the poverty of the Nation, and the appropriating the Customs to the use of the Navy, though the sum is moved high, yet seconds it, "not exceeding 300,000*l.*"

Sir Thomas Littleton.] Would not have the Customs forgotten too much, to let that Money slip; the proper Money for this purpose. Therefore, on condition the residue of the work may be done out of the Customs, by this way both these being done, you may have a fleet, and to the end they may go together, he is for the Motion.

Mr Pepys.] As for ships upon the stocks, the *King-Fisher*, that one ship, and that only, is upon the stocks. To take away the jealousy, be pleased to receive this one word more. As for the "sails," he denies it not to be a work of greater time for providing them; but for the "canvass," four fifths must be from abroad. *Vitry* and *Morlaix* canvass must be for the grosser part of the sails. There is the same reason for providing "shot" as well as "guns," and pray consider it.

Sir John Ernly.] As for iron guns, brass guns indeed cost more, but in the last fight 500 iron guns broke, and cost some mens lives. If you provide not brass nor nailed guns, there will be great disadvantage in iron—Would have one third part of the guns brass, or nailed.

Mr Powle.] We cannot make a right state of this without an account of the Customs, and, if they had been applied to the use of the Navy, this charge had not been asked now. You were told that the established summer-guard came to 250,000*l.* for six months with 6000 men; 100,000*l.* in time of peace—Whether ordinance and other charges out of the Customs—*Tripoly* 60,000*l.* Looks upon that still as time of peace, because in war this House is consulted—He thinks less than 300,000*l.* might have served at this time, but because that sum is moved, he complies with it.

Sir Thomas Meres.] Till appropriating the Customs be done, he shall never believe it. 'Tis no new charge
on

on the Crown; it is on the Customs—The Revenue was ours, and upon every anticipation must be ours—We are not inclinable to punish; we cannot look back, but he would take care for the future—This is still the money that this House gives, and without the Customs annexed he cannot agree to the Question.

Mr *Pepys.*] Would have you come to the Question, without mistakes, but consider of the building these twenty ships, and their guns—So that he can never give his consent for 300,000*l.* which will cost you more.

Sir *Thomas Clarges.*] Some say 60, and some 70,000*l.* for stores. He wonders what the money has been employed in. We are told also of “gunners stores;” we shall hear of “victuals” and other things hereafter.

Mr *Pepys.*] Bullets and stores will amount to 45,000*l.*

Mr Secretary *Williamson.*] Let them find it elsewhere, whose it is—The Customs were given for constant expence of the Navy, but when there is any extraordinary, from causes visible and inevitable, as decay of the fleet, they cannot be supplied by the ordinary expence. If the House gives no more supply now, than what will fit the “Hulls,” let the Question be put; but if that be not a fit Question, then to the other part, which the House was moved in, “for full equipage, ground and running tackle, and guns, &c.” computed for from the gentlemen that understand the Navy.

Mr *Vaughan.*] They say it is not enough for these ships, but he is sure it is too much for us to pay.

Sir *Thomas Lee.*] The ordinary Revenue is for ordinary occasions of the Crown. But what is become of the extraordinay aids? He thinks this supply is proportionable for building twenty ships—He thinks the latter part of the Question is nothing, but saving the people of *England* from this charge every Session. If the ships must have finer painting and gilding, or guns extraordinary, let it be out of the Customs; 'twill be a good saving to an ill Question.

Sir *John Duncombe.*] He hears no body except against these calculations given in by *Pepys.* 'Tis not “gilding,

ing, nor painting" not this, nor t'other, but so much money to equip so many ships as you have given—Therefore moves for 380,000 *l.*

Sir *Charles Wheeler.*] He that can calculate strongly, leaves nothing behind, as he that asserts strongly. 'Tis often repeated what you have given, but all has been to the King's proper use. He has not 1,200,000 *l.* constant revenue, besides the additional duty upon wines. The parting with the Court of Wards is not considered: He would not have mens reasons captivated with such assertions, and not consider the King's capacity. The money was given to pay his debts. This repeating what has been given the King, leads him into the consideration of what has been done by the King, to have that also considered. He is for that sum and no more than will do, according to the computation brought before us.

Sir *Edward Dering.*] This is a great sum, and not to be parted with, without consideration. There is not a freeholder in *England*, but knows our safety, and all depends upon it. Iron guns recoil, and instead of doing execution on the enemy, do it on ourselves. So that in the whole it will come to 380,000 *l.*

Sir *William Coventry.*] The busness of those that sent us hither is to be defended, and that done the cheapest way. For the sum he proposed, he hoped for a concurrence, but, as for that one thing of guns, he has heard iron guns are better for service. The bursting them is by shots hitting on them, and other accidents, not by shooting. He meant by that sort of guns such as are of known experience, iron guns of 20 *l.* per ton. Demy cannon, you were told, is at 17 *l.* per ton, and the small guns at 14 and 15 *l.* per ton. Is there no abatement then in 12 *l.* per ton? Sail is capable of spoil, and not of improvement, 'tis confessed; and you are told, "that as for canvass, it must be had abroad, at *Morlaix*, and *Vitry*." But the best canvass, in his time, was *Hollands* doubles, and in the West Country they make so equally good of that sort, that the officers of the Customs would not let it come in, as *English* canvass, because 'twas so good.

good. He has been told that there is now so many of these canvas works on foot as fully to supply the Navy. So that what may be abated in the price of guns the sum proposed will plentifully provide for the present occasion.

Mr Sackeverell.] Is one of those who must pay his share of this money, and one of those who would have some recompence for it. Would not have our money taken, and give us nothing. Would have the appropriating of the Customs annexed, or he shall not give his vote for one farthing; and this Bill to be so altered, and not to be brought in, till the good and necessary Bills we have in hand be also passed here. We have many good Bills in hand; and when Money is once given, then nothing is done, and no redress. Therefore would put that part of the Question, else he'll give never a penny of money.

Sir William Coventry.] Another time and place must be for the addition to the Question moved for. Put the Question, "for twenty ships, not exceeding 300,000*l.* for rigging and furnishing thereof." The latter words are not in your commission, nor authority.

Sir George Downing.] The King's Grants are construed, in all Courts, in as full and ample manner as may be, for the benefit of the Grantee; and he would have us do so in this Question.

The Question being put, at the Committee, That 300,000*l.* be voted for the building, rigging, and towards the furnishing twenty ships, it passed in the affirmative.

[*November the 5th, Gunpowder plot.*]

Saturday, November 6.

Report was made from the Grand Committee, by Sir John Trevor, of the rates and valuations of the twenty ships, and the money agreed upon for setting them out, &c.

[*Debate.*]

Mr Mallet.] When a sum is reported to the House, agreed upon at the Grand Committee, 'tis against Order to

to make any addition to that sum. The Question must only be, "Agree, or disagree."

Sir William Coventry.] He may move to disagree, and to re-commit it; but cannot move for an additional sum.

The Speaker.] The House is not bound up by any Order. 'Tis an orderly motion, to move for an addition.

Sir Thomas Meres.] The Speaker is right in every point but Money. If it be the opinion of the majority of the House for Money, he'll show where you may have it, but not without two Questions. But before we come to the Committee again, would fight it out in the House. And now would agree with the Committee; agree, agree, agree.

Sir Robert Holt, Proffering several times to speak, and others being called up, said,] He wonders a Knight of Warwickshire may not be heard as well as another.

Sir Thomas Lee, reflectively upon him, said,] A man that is outlawed after judgment cannot sit here *; and knows then no occasion why a Knight of Warwickshire should be heard.

Col. Birch.] Believes the Knight of Warwickshire will tell you, 'tis the sense of his county to give more Money.

Sir Robert Holt.] Is for raising a sufficient sum of Money; and has discoursed with several knowing persons in the Navy, who assure him that this sum will not serve for the purpose you intend it; and knows it to be the opinion of the most substantial freeholders of that county, that they would have the King be sufficiently supplied as to these ships, which this sum will not do—Therefore moves for more.

Mr Secretary Williamson.] Would re-commit it, upon the Debate of the sum not being sufficient for what you intend to do. To pass this Vote of agreeing, is to make the first Vote useless, and to contradict it, which was "for twenty ships fully fitted for service." This Vote sufficiently declares, that you have not done what you meant—And that thing not being done, this matter being so public, so fundamental, so wholly the nation's concern,

* Alluding to his having been prisoner in the Fleet.

and

and so little any man's else, if he was irregular in his first motion, does move then to re-commit it.

Sir Richard Temple.] Would remove one mistake—'Tis said, "it is not lawful to mention any sum here that he would have." If he mention the sum debated at the Committee, 'tis without breach of Order—We have done something towards it, but not the thing itself—The Vote speaks itself. It has done towards it, but not the thing itself. Would not have it said, that the work goes not on, because you will not be at the cost of it. If this sum will not do it, where is the wisdom to profess you will do it, and not come up to it? The ground of all the miscarriages was, when you gave the King money to pay his debts, and did not express it; so that the money was not laid out to that end.

Mr Leveson Gower.] 'Tis said, "that the money will not do the work it is intended for." If the Committee sit upon this nest-egg, it may produce chickens when the House shall come to sit upon it. Therefore would agree with the Committee.

Sir George Downing.] Speaks only to Order. This Vote of the Committee is against the Order of the House. The Committee passed a Vote for "twenty ships;" and you made it your Vote, "that they should be built with all convenient speed." Then another Vote the Committee made, "for money to build these ships only." Then it was moved to explain what was meant by "building only;" and the Committee, without any explanation, say, "That this sum is for building, and towards guns, tackle, &c." which is quite against your Order.

Sir Edward Dering.] Is one of those who voted for twenty ships, and the Committee comes not up in the Vote of money to these twenty. We have brought them up to dimensions, which must be strengthened, according to the number. You have voted guns of the worst sort; and since you have voted the best ships, would have the best furniture for them. In our calculations we have not mentioned "Stores;" which were not spoken of till the sum was voted. Would therefore bring the

the sum up to 80,000*l.* more, to make the work complete.

Mr Vaugban.] He has not spoken yet, because he can say nothing, but agree with the Committee. This sum voted is too great already; therefore does not agree to that, but agrees with the Committee.

Mr Pepys.] 'Tis not much he shall now offer. That the 300,000*l.* is not enough, he can show to any man that will contend it. It seems hard that the words should have one signification, when the King speaks to us, and another, when we speak to him. For instance, tonnage and poundage is granted the King "for building ships." He appeals whether that Money is only meant "for Hulls." It is not the King's construction of it. Now since the Vote itself confesses that the sum is not enough, moves that you will not countenance the King's doing less than you have voted the number.

Mr Papillon.] A man is perfectly cloathed, though he has not three shirts, or three coats on. A ship is fitted, though it has not three suits of sails. But 'tis truly said, that in war we must have more, but we are not now in war, and the doing more will be anticipating of Money. If the King engages in a war, he will consult you for four times as many cables and anchors. The Question, it seems, is, Whether we shall provide now as in war. Many of these provisions are wasting and decaying, as sails, and cables; and, as for the Navy, would not have that lie by—Therefore would agree.

Sir Lionel Jenkins.] He will give you an account of his notion of "building Hulls." One is metaphorical, and the other is of literal and primary import. In a covenant, a man may do so and so, but consider the general word, in latitude of law, it gives it such a building as is complete. 'Tis no perfect building else. Merchants ships are arrested in the whole ship, guns and all. The Vote of twenty ships will make a great noise. If you derogate from it, you derogate also from your reputation. 'Tis a rule in time of peace, to prepare for war. He offers

offers therefore to your consideration the danger of this work lower than you have voted. Governments stand most upon reputation. In the agony of war, 'tis too late, if you defer it, to consult the honour of the nation. You do nothing in this, but for your own honour and reputation. Therefore moves for an addition to this sum.

Sir Thomas Lee.] Is not well informed, and therefore would know, whether, in case "a ship" be left a man, by will, and have no guns, the executor be bound to put guns into the ship, if there were none before, and whether, if the King press a merchant-ship, and she have no guns, the owner is bound to find them.

Sir Edmund Jennings.] A gentleman said, the other day, "he could demonstrate, as clear as the Sun, that the revenue, as how, was sufficient to do this businels." If he can do it, why does he not? If he cannot do it, let him tell us so.

Mr Finch.] The reaſonableness of the addition to the sum, and the method of it, is the ſubject-matter of the Debate. He will not pretend to argue the point of law, between the two gentlemen. We are not arguing with the King—Let us not diſtinguiſh ouरſelves out of our ſafety. Twenty ſhips, and not fitted to go to ſea, is a contradiction to your firſt Vote. The Vote of the Committee being but "for and towards, &c." we have fallen from conveпiency to what is abſolutely neceſſary, and now we are dwindling yet leſs—The thing is reaſonable, and he would have the Speaker put us into a method.

Sir William Coventry.] The objecion is upon the word "towards." If gentlemen are deſirous to have the word "towards" out of the Question, he is willing it ſhould—Has his particular concern in this buſineſſ. Because of the ſum is muсh concerned, and is exceeding fearful leſt, if we go to a Committee again, we ſhould be thought over-lavish of the people's Money, and poſſibly the King may have the leſs by it. On the grounds
the

the Committee then went, he sincerely believes the sum rather lavish than short.

Mr Pepys.] He should be the last man in the world to question *Coventry's* sincerity—*Interrupted by*

Sir Thomas Meres.] *Pepys* has been heard three times over. Pray give your opinion of the two Professors, *Coventry* and *Pepys*. Pray put the Question, whether *Pepys* shall be heard again, and he shall give his negative.

Sir William Coventry.] Rises up to desire that *Pepys* may have leave to speak again, and hopes *Pepys* will do as much for him.

The Speaker.] He never saw that a man was denied to set the House right in matters of fact.

Mr Pepys.] Rises to compare *Coventry's* measures and his, his profession and mine—Thinks our sincerities alike.

Sir Philip Warwick.] Has great value for what these two persons say. They are men of knowledge and sincerity. He has ever been of opinion, that what you do, for your own safety, will be acceptable to the people, to provide for war in time of peace. The King would think it his duty to the nation, if he had the sole doing it without you, to spend 400,000*l.* on these ships. But he would much rather agree, than put things to this dispute.

Sir Charles Harbord.] Is informed that there is no man of skill in these things, but will say, that furnishing the ship is double the value of the Hulls. If he sent a servant, or son, to sea, would send them in ships safe for them to go in.

Sir John Talbot.] Whenever you agree on the precise sum, 'twill lead to a monthly tax, otherwise it will be uncertain. 300,000*l.* at the rate of monthly tax, comes to 68,000*l. per mensem.* If a five months tax, it comes to 347,097*l. 12 s.*

Mr Sacheverell.] A quarter of the tax for the royal aid, for seventeen months, does it.

Mr

Mr Sawyer.] There is a building of ships, when carpenters are said to build ships, and when the nation builds. The word "towards," is derogatory to the other part of the Vote. If it be not sufficient, it must come to a recommitment.

On the Question, the House agreed with the Committee, that one first rate, measuring 1400 tons; five second rates, measuring one with another 1100 tons; and fourteen third rates, measuring one with another 900 tons, should be built; and that 14*l.* per ton be allowed for building the first rate, 12*l.* 10*s.* per ton, for each of the second, and 9*l.* 10*s.* per ton for each of the third rates.

Resolved, on a division 176 to 150, That this House doth agree, with the Committee, that a supply be raised, not exceeding the sum of 300,000*l.* for the building, and towards the guns, rigging, and other furnishing of the said twenty ships *.

Resolved, That the 300,000*l.* be raised by Land Tax, in eighteen months, at 1700*4 l. 17 s. 2 d. per mensem*; which comes to as much more of the 300,000*l.* as will defray the charges of collecting it.

[The House adjourned, on a division 163 to 141.]

Monday, November 8.

Lord Morpeth † presented a Petition from Mr Howard, desiring his release out of the Tower.

Col. Birch.] Hears it said that the Petition answers not the thing for which he stands committed. Would have the Order read by which he was committed.

Sir George Reeves.] He says, "he expresses himself sensible of the displeasure of the House," which implies, he is sorry for it.

[The Order was read.]

* It is fit to be recorded, that from the state of the fleet, which was now given in, it appeared that we had no more than eight first rates, nine second rates, and forty three third rates. Total sixty eight. While the French exceeded us in the number of these rates by twenty three, and the Dutch by fourteen;

so that the French were at that time the greatest maritime power in Europe.

† Son of the Earl of Carlisle, whom he succeeded in that title in 1686. He died in 1692, and was Great Grandfather to the present Earl.

Col. Birch.] Now he has heard the Order read; but he is informed the Petition is not signed. Would know how we can proceed upon what has no hand to it.

Mr Crouch.] Has more care of your Honour, than any man's. Would have it signed before you receive it.

Sir Edward Masters.] If he be lame and cannot write, how can you expect it?

The Speaker.] In complaint of any grievance, the party signs the Petition, but there is a Member who tells you that *Howard* avows every word of the contents of it. Now the Question is, whether you will credit you Member?

Sir Thomas Lee.] Since his hand may be had to it, would have it. It may be done in an hour or two's time, and 'tis not for your honour to receive it unsigned.

The Speaker.] The Petition is entitled, "the humble Petition of *Thomas Howard*"—How can you tell it is his hand if it was signed?

Sir Charles Harbord.] Hopes his release is in Order to reconciling the thing in difference, and hopes you will do it before you leave it.

Mr Mallet.] He never saw a paper of a worse nature, within these walls, and neither by the answer to the Committee you sent to him, nor when he was here, to give you any satisfaction!—The Names given to your Members, as "insolent," &c. go to your whole body, and religion too.

Sir John Birkenhead.] The Question is now, whether you will give answer to this Petition, being not signed by his own numerical hand. Is sorry to hear Members of the Long Parliament urge this point of "not signing Petitions," when they know that Petitions in those times were delivered in the names of many thousands, and yet not signed. This is averred to be *Howard's* Petition. You know how often you have done the contrary. He would receive it.

Sir Edward Baynton.] Lord *Cavendish's* Petition was not delivered without signing it. The sense of the House being

being understood, he believes a Petition will be prepared accordingly, and the House will discharge him, he believes, *nemine contradicente*.

Mr *Sacheverell.*] He desires *Howard's* liberty, as much as any body, but would have him on an equal foot with the other honourable Member, *Cavendish*, whom you committed.

Mr *Sawyer.*] A person is ready to attest that he could not write, (Mr *Roper* by name) and therefore he did not sign it.

Mr *Russel.*] Lord *Morpeth* did not say he could not sign it, but that it was an omission; and *Sawyer* has wrong informed the House.

He was discharged upon his Petition.

Col. *Birch.*] Because you have made a new precedent (how you came to strike up this, he knows not,) but would have it entered into your books, that he being not able to sign his Petition, you received it without signing.

Sir *Thomas Lee.*] Would make an Order, that both Lord *Cavendish* and *Howard* should attend the Speaker, to end the business, and if you find it too big for you, then to report it to the House, to take some Order in it— And to be entered in your Books, “That the House being informed, by Lord *Morpeth*, that *Howard* being not able to sign his Petition, that you receive it without signing.”

It was entered accordingly.

Ordered, That Lord *Cavendish*, Sir *Thomas Meres*, and Mr *Howard*, do attend the Speaker, who is desired to accommodate the differences between them and report it to the House.

Mr *Russel.*] Coming through the Hall to day, he heard of a Priest, one *St Germain*, who forced one Mr *Luzancy* (in company with an *English* Jesuit, who spoke broken *French*,) a minister of the *French Church* *,

* This *Luzancy*, preaching in the *Rome*, and had afterwards printed *French Church* in the *Savoy*, had his Sermon. Father *St Germain*, taken occasion to inveigh bitterly otherwise called Dr. *Burnet*, was again the errors of the Church of confessor to the Duchess of York.

with a dagger in his hand, (threatning to stab him on refusal) to sign a Paper of recantation, containing many seditious things, and that the Nation would turn to Popery, &c *.

Sir *Henry Goodrick.*] Has little to add, but matter of fact, the thing has been so well related by *Russel*. But thinks it his duty to take care that no discouragement be put upon persons that turn from Popery to our religion. This gentleman, Monsieur *Luzancy*, is as learned a man, as any that has turned to our religion. The Priest, *St Germain*, belongs to the Dutches of *York*, and so gives an account of the matter. He had the account from Dr *Brevall*.

Sir *Robert Southwell.*] That night the Council met, and Lord *Holles* was summoned to attend, and he believes the King has the matter under his particular cognizance.

Sir *Thomas Lee.*] He knows not how the House can acquiesce in this, when you have an account that one suspected to be a Jesuit had a hand in this. Some care shonld be taken to apprehend this *Englishman*, who has walked about the streets, and has done, and may do, he believes, mischief.

Sir *Thomas Clarges.*] The fact is treason, and though one of these assassins be a *French* Jesuit, 'tis high treason, and one of the greatest violations that was ever done in a Protestant country. They came to his chamber and threatened, if he made not a recantation, they would stab him. By 3 *James*, " 'Tis treason to draw or persuade any man to be reconciled to the Pope." This may

* *St. Germain*, in several conferences with *Luzancy*, had attested, " That the King was a Roman Catholic in his heart, that the Court was endeavouring to get a liberty of Conscience for the Roman Catholics; and, that granted, in two years most of the *English* would acknowledge the Pope; that he knew the King's intention concerning Religion, and that he was sure his Majesty would approve all

he should do in that matter." He laughed at the Parliament " as being only a wave that had but a little time," and said, " That no body was more welcome at Court, or had greater intrigues with the nobility, than he; that it was good sometimes to force people to Heaven, and that there was an infinite number of Priests and Jesuits in *London*, who did God very great service." *Ralph.*

be an undermining us all. 'Tis not six months since a secular priest was arraigned and condemned for perverting one from our religion—Prays that care may be taken, that this *St Germain* be apprehended presently, and that the Attorney General may prosecute him.

Sir Philip Musgrave.] This is so great an affront to the Church, that, if nothing be done in it, the Church will grow low in esteem. Pray proceed with all expedition in it.

Sir Charles Harbord.] This goes beyond all precedents, to persuade, not only with arguments, but poignards! He never heard the like way before. Moves that the Chief Justice may issue out a general Warrant to take him *ubicumque fuerit in Anglia*, to be indicted for the King's honour, justice, and safety.

Sir John Birkenhead.] He values the thing the more, because *Luzancy*, by coming over to our Church, has done great hurt to the Church of *Rome*. He has written against it. But this *St Germain* is a *Frenchman*, and not within the statute of 3 James—*Insinuando* by poignards, and daggers, as the story goes, to renounce God, and then stab him, to be revenged both of body and soul! These strangers to come in this manner to the King's subjects!—He hears *Luzancy*, though he be not naturalized, yet is denized, and made the King's subject. The King has taken cognizance of it, you are told, and believes you will have an effect of it suddenly. If not, do what you please.

Mr Secretary Williamson.] The fact is a violence offered to this convert, Monsieur *Luzancy*. On Thursday the King sent for him, to the Lords House; the King had a paper in his hand, given him by Lord *Holles*, relating the violence offered this *Luzancy*, on the fourth of October last, (*and so gives an account of the paper.*) The King sent to have *Luzancy* examined, and the parties were warned to be at the Council at five of the clock. At seven *Luzancy* comes, and was examined upon oath; the next day he promised to bring his witnesses. When he was examined upon oath, the Bishop

of Oxford went to hear the examination. The King was presented with the examiners in the afternoon, and, if it could be, he gave Order for a special Council, but it sat not, and this day there is a Council extraordinary for the thing.

Sir Thomas Clarges.] For ought he perceives, here is a failure of justice. Would know whether the Secretary, when he had this information, did send a warrant to attach *St Germain*.

Mr Secretary Williamson.] He sent a messenger to attach this *St Germain*, but he was not to be found. He gave his papers to the King; he had his direction, and obeyed it,

Sir Thomas Meres.] There is a motion made to apprehend these two priests, and he seconds it.

Mr Attorney Montagu.] The King, as you are informed, has taken early notice of it, and as much as can be done. But it will be very ill if we do not something in it. Moves that two of our Members may go to the Lord Chief Justice for a warrant to apprehend them forthwith.

Mr Williams.] There is more than a violent presumption, that these persons are guilty of the fact. The statute gives directions in it, and he would have the Lord Chief Justice sent to for his warrant.

Col. Sandys.] The Priest has done you a kindness. The nation is full of them, and would have a warrant to search for all Priests and Jesuits in general.

Resolved, That the Lord Chief Justice be desired forthwith to issue his warrant in particular to apprehend those Jesuits, and another to search for and apprehend all Priests and Jesuits whatsoever.

Sir William Coventry.] In town and country these Priests gain converts. 'Tis still a poison, and still a danger. This Priest has done you service, though, he thinks, he did not intend it. It seems he is not only threatened to be stabbed, but put into a convent, and how he would be used there, you may imagine—Would have us to think also of the protection of converts that come

come over to our Church, and would have the Committee to consider a way to protect and encourage converts.

Mr Secretary *Williamson.*] Goes to it with great haste, and no coolness. He sent a messenger to attach this person, not a quarter of an hour after he was commanded.

Mr *Sacheverell.*] Is informed that several such persons are daily at the Court. Would have the Committee examine by whose default the Proclamation is not executed upon these persons.

Mr *Buller.*] Would have enquiry made, at the Committee, why there is no execution of the Laws. Many Catholics are indicted; and their conviction neglected.

Sir *Henry Ford.*] All kinds of Converts ought to be encouraged, as well as those to conformity, as others.

Sir *Charles Harbord.*] The King has settled sixty pounds *per ann.* on the *French* Church, and would have the King thanked for it.

Mr *Sherrard* *.] proffered a paper to be read concerning *Luzancy*.

The Speaker said.] The Paper tells you I know not what, and comes from I know not whom.

The paper was read, being an account of the assault upon *Luzancy*.

Sir *Thomas Meres.*] The paper may be some help to the Committee for preparing your law against Popery the better.

Sir *Allen Apsley.*] He has seen a paper from *St Germain's* friend so far different from this, that he would have *Luzancy* sent for by the Committee.

Col. *Birch.*] Is glad the House is so sensible of these things. It may be of great service to us. There is seldom any judgment upon a nation, but the great God gives us great warnings, and hopes we shall make use of them. If they begin with this sport of stabbing, he believes we shall have the better of it. This Monsieur,

* Second son of Lord *Sherrard*, and great grandfather to the present Earl of *Harborough*. He died in 1695.

(he cannot remember French names) *St Germain, Apsley* has proposed something in defence of. If he be at liberty to write in his own defence, he wonders how Secretary *Williamson* could not meet with him.

Sir Allen Apsley.] The paper of renouncing the Protestant religion was an offer of *Luzancy's* own, and done of his own accord.

Sir Nicholas Carew.] *Apsley* said, “A friend of *St. Germain's* brought him this paper—” Would have that friend found out.

Sir Allen Apsley.] Said he knew not the person's name that brought him the paper, (*being ordered to name him*) but would enquire him out against to-morrow.

Sir William Hickman.] Would not take such a paper, unless you knew from whom it came. When the King and Kingdom are concerned, would know the person.

Sir Allen Apsley.] Protests before God he knows him not.

Sir John Hotham.] Would have the person described. 'Tis strange he should take no notice of a person with such a paper.

Sir Philip Harcourt.] 'Tis strange, that *Apsley* should produce a man to the Committee whom he knows not.

Sir Francis Drake.] It would do well that care was taken of converts—We'll step farther—Has heard that a Priest was arraigned, condemned, and not executed, for perverting—Would have an Address to the King, that, for the future, none such should be pardoned.

Serjeant Seys.] 'Tis death, in *France*, to come off from the Romish to the Protestant religion. Would have *Apsley* asked the circumstances of time and place, and of the person, and if he has the paper, to produce it.

Sir Nicholas Carew.] Would know who got the reprieve for the condemned Priest, and address the King about it.

Sir Thomas Lee.] As it is an extraordinary difficulty to convict a Priest, so 'tis dangerous to them that do it, at this rate. The Priest mentioned being set at liberty, 'tis a fair way to have nothing done in it. Moves therefore

fore that an Address be made to the King, that no Priest convicted may have his pardon, but execution be done ; and to know who got the reprieve for the last Priest—But he willingly goes off from that motion of an Address, hoping that, in the state of the nation, to morrow to be considered, it will end in such an Address.

The Bill of Popery was read [the third time] containing a Test upon Lords and Commons in Parliament, &c.

Sir *Thomas Lee.*] Moves to leave out the Test “upon the whole Parliament.” It will never else pass the Lords House ; besides it takes away the people’s rights in Elections—*He said privately to me, [Mr Gray, the Compiler]* “That it was only to enter his claim against all manner of Tests.”

Sir *Thomas Meres.*] The Bill is only, that Papists should not make laws, nor have influence at Court. There is no taking away privileges of Elections in it. It imposes not at all. But the people may be mistaken in their choice. The oath of Allegiance and Supremacy is now taken, at the door, before any Member sits here, and, if refused, he cannot sit. This is only that the fountain of executive and legislative justice may be purged. Would rather go a milder way, by prevention, than punishment ; and would have the Bill.

Mr *Sawyer.*] Believes, no Protestant Lord will be against this Bill. In King *James’s* time the Popish Lords did forbear to sit in Parliament. The giving the oath of Allegiance is perfectly a new thing ; an innovation. In Queen *Mary’s* time there was no purgation.

The Bill passed and was entitled, “An Act for hindering Popish Recusants to sit in either House of Parliament.”

In a Grand Committee on the way of raising the Supply.

Sir *John Trevor* in the Chair.

Sir *John Hotbam.*] Moves that this tax may be levied upon the Jews, who are wealthy, and may well bear it.

Sir *Nicholas Carew.*] They pay privately already for licences to be here.

Sir

Sir Thomas Meres.] Would have this tax upon the Jews for paying off the Anticipations on the Customs. This is the first time that ever we had a tax here for the Navy; the Customs being granted for that purpose. He knows no way, mathematically equal, for raising this money. But the most equal way (the nation having the benefit of this, he hopes, for their safety) is the most general.

Sir John Holman.] In all places but here, the Jews have marks of infamy. They live greatly, and he would have them taxed.

Sir Eliab Harvey.] He fears, if we raise money upon them, we shall establish them by an Act—He believes they pay money for their Toleration, but knows not how.

Sir Thomas Lee.] Since a certain sum is for the greatest use and safety, and to comply with the King's desires, a land tax is the most certain way of raising it, and if the ships are not built, he knows where you will lay the fault.

Sir Edmund Jennings.] Has heard much talk of the poverty of the nation, but now it seems we are grown rich on a sudden. Has heard that people should sell bread to buy bacon, but if this be upon land they must sell both. Drawing people hither decays rents in the country—Would have some other way found out, as by imposition on the French trade—Would consider also how we come to want ships—Has there not been the breach of the Triple League, the alliance with France, the Dutch war? If promoters of such counsels were known, why are not their estates made liable to forfeitures to pay these taxes? Before you proceed to Land Tax, receive some other proposals. How will you answer it to the country, when there is no occasion to raise money?

Sir Thomas Lee.] Wonders Jennings should cast a reflection upon the House, who thought it necessary to raise Money.

Sir Thomas Littleton.] Thinks that Jennings would do very good service to the nation, if he could find out the pro-

promoters of these Counsels. He has his estate in *London*, and *Essex*, where the rates are exceeding high in taxes. But knows no other way you can raise this Money.

Sir *Nicholas Carew.*] The taxes lie hard upon them in *Surry*. He could wish for a Chamber of Justice, that persons may be called to account, how, in so short a time, they have raised such great estates. So long as land is free, we shall have Land Tax asked us, whatever we give else. Therefore he is now for it.

Col. *Titus.*] The breakers of the Triple Alliance, and the promoters of the *French* league, are dead, and he is not for experiments in this House, Yet now, though he can the least bear it, he's for it.

Sir *William Wentworth**.] New buildings and a land tax (the last prorogation) when all other things fail.

Mr *Boscawen.*] When the Ship-rates were, there was no such thing as land tax; the Council had then values delivered in by the rates of the trained bands. *Cornwall* was as much as the thirteen counties of *Wales*, by reason they were seven regiments of trained bands. *Norfolk*, &c. over-rated, not by reason of being the associated counties, but for the same reason. Next after the Ship-rates was 400,000*l.* before the war. *Devonshire*, in the Ship-rates, was low, and *Cornwall* high. Sir *Walter Raleigh* came down, in Queen *Elizabeth*'s time, a Commissioner for both counties. The North was easy on the Ship-rates—And that relieved them again. There is no kind of proportion between counties, and some parts in them, some parts being extravagantly high, and some low. The subsidy man was supposed to be a man of substance. Land tax is on all men—And they pay the greatest part of chimney money, and excise, and 'tis reason; the most ordinary people being the most mutinous, should not have a burden laid on them now. 'Tis an easier matter to pick out a man of 1000*l.* per ann. than ten per ann.—He is much against land tax, and had rather pay 100,000*l.* more

* Grandfather to the present Earl of *Strafford*, his second son (who inherited the title of Lord *Raby*,) being so created. He died in 1693.

by way of subsidy. The *French* match, and the *English* subsidy, did conquer all *France*, and therefore he is for subsidy now.

Mr Waller.] The ship money maintained the sea by the dry land. The *Venetians* beat the Grand Seignor by sea, not by land, tax. The judges, in the ship money, were not judges of the necessity of raising it, but the law by which it might be raised, though we are judges of that necessity. Tonnage and poundage was granted for defence of the sea. And it troubles him that a land tax must supply the sea. We have trade, but an ill balanced trade, and if we come to land to maintain the sea, the nation is undone. Wishes a tax that way that is most natural, for this purpose, *viz.* upon merchandize, to discourage the extravagant consumption of foreign commodities; but rather than not have these ships built, is for land tax.

Mr Powle.] One reason for land tax is, he thinks you can do no other way, which is strong. Another reason is, he fears, if land is not taxed with this, it will be taxed with something else.

Sir Eliab Harvey.] For seventeen months 68082*l.* 13*s.* 3*d.* If you add a week more, it will be 1000*l.* over.

Mr Boscawen.] Moves it may be for eighteen months.

Col. Bircb.] If he thought this would lead to any more objections, of more or less money raised—He never saw the closeness in a petty business ever did good. If once you come to defend the sea, by your land, your land will be worth nothing. We have some bills that he hopes are worth twice the money, and if he thought those bills would not pass, would give his negative to this. Put it for eighteen months tax, and he hopes there will be no negative.

Resolved, That the supply [not exceeding 300,000*l.*] be raised by a land tax, and monthly assessment.

Resolved, That the said supply be raised by 18 months assessment, according to the proportion of 17,204*l.* 17*s.* 3*d.* per

per month, to be paid by quarterly payments—Which comes to as much more of the 300,000*l.* as will defray the charge of collecting it.

Mr *Sacheverell.*] “That ‘tis the sense of the Committee, no more be raised.” Is one of those that loves to be quiet, therefore would have no other charge laid on the subject this Session of Parliament.

Sir *Tho. Meres.*] Certainly ‘tis only proper to raise money at a Grand Committee, but we need but speak once to deny it, and therefore that may be done in the House—There is no hurt done to the people in not giving. Therefore, though the Speaker says otherwise, ‘tis Order. At this time of the night, ‘tis hard to fit, but yet ‘tis brave.

Sir *William Hickman.*] There needs little argument to make good this Motion, the sense of gentlemen is so well known. Therefore he seconds the Motion.

Sir *John Talbot.*] ’Tis the natural Question, Agree, or not agree, with the Committee.

Sir *John Birkenhead.*] To make this an integral part of the Question, is not proper.

Sir *Thomas Meres.*] The reason is granted, therefore he speaks only to Order. This is a matter relative to the other two Questions, and will induce consent to the other part of the Question. This is an addition no way different from the former Question; ‘tis relative to, and agreeing with it—But not to be without the Question, either put the main Question, or previous Question, which you please.

Col. *Birch.*] To the Orders of the House. It has been a received opinion since he knew the House, whenever gentlemen desire words to be part of the Question, ‘tis never denied that those words should be put to the Question, whether they shall be part or not. When you are told, without the addition, we can agree, or not agree; then the words are added to the Question.

Sir *John Duncombe.*] ’Tis said these words of “not exceeding,” are relative to the rest of the Vote. They are as giving money, and giving no money. Therefore we

we ought not to add the words. 'Tis such a jealousy, and distrusting the King, as if we were jealous of ourselves. Can you bind yourselves by a Vote? No Vote can bind you to the losing your liberty. 'Tis against our very call hither. If more money be given, it must have all its circulations at a Committee. 'Tis not possible to carry money from this House. He knows not what use other men may make of it, in future Parliaments, though he believes gentlemen mean here honestly.

Mr Sacheverell.] There was a Vote, two or three years since, of the same nature.

Sir Henry Ford.] You may limit yourselves, but 'tis not prudence to do it. You have voted twenty ships, and your neighbours exceed you forty. You must be affronted if you keep to your Vote. Many, he fears have watched for this occasion. You know not emergencies.

The Speaker.] "And that no other charge be laid upon the subject this Session of Parliament," to be the addition to the Question.

It passed, 145 to 103*.

Tuesday, November 9.

A Bill to prevent the exportation of Wool, [was read the second time.]

Sir Richard Temple.] Has considered the most effectual way to prevent exportation of Wool, and thinks that the best way to prevent it, is to let your yarn be exported. When you withheld your white cloths from *Holland*, you set up that manufacture there. The Dyers could not live, and so they sat up that manufacture. Could they have your yarns they would not be so greedy of your wool; and so destroy that manufacture abroad. He offers it to be recommended to the Com-

* A motion for Candles preceded this last Division, The Question being put, was carried in the affirmative, 143 to 118.

mittee,

mitte, to let yarn go out as the first manufacture. But what's above all, we encourage not the manufacture of cloth by our wear. We usually had suits and cloaths of the same cloth, which was a great consumption of the wool, and now we wear stuff and silks. If you therefore destroy not the wear of *French* manufacture, you spoil all trade at home.

Col. Birch.] There are no hopes that our yarn shall ever be received abroad, when they can spin it at the same rate we do; but the cry of the cheapness of wool comes from this cause. We have more than *England* can spend, as we have more corn than we can eat. Since the Bill for forbidding *Irish* Cattle, this evil is come upon you. They have above a third part more wool, by that Act, in *Ireland*, than they had before, having turned their ground from breeding Cattle to breeding Sheep. But this is not all the evil. He appeals to any man, if he knew not the Exchange of money into *Ireland* to be above five, six, or seven *per cent.* and now it comes even into the exchange. In a few years, at this rate, *England* will be made *Ireland*, and *Ireland* *England*. The fall of the Exchange comes thus. We sent 400,000 *l. per ann.* the Exchange at seven *per cent.* and instead of this we send not now 60,000 *l. per ann.* Will you have wool rise, when you stop the passage of it where it should go? There are gone out of the West of *England* one hundred woollen manufacturers into *Ireland*. Then either let wool go out of *England*, or use it. Export it wrought, or unwrought, free, with a certificate, at the Custom house, of six pence, to see only how we balance trade with the world. Next, he would have that Bill of prohibiting *Irish* Cattle repealed—*Scotland* has done the same thing—There was a Commission to settle trade between them and us, but it is broke up—Would refer it to a Committee to consider of a free trade, and, particularly, he offers to your consideration the repeal of the *Irish* Bill, which will do your work.

Mr

Mr *Swynfin.*] Wool is a drug, because we have more product than *England* can spend; that seems to be the cause. But if we consider, whether more sheep are not bred than ordinary, consider, in fact, the late great rot of sheep, which consumed six of ten parts of the wool, which was little useful for cloth. But how can this be the cause of this falling of wool upon the rot? It cannot be then from the multitude of the sheep. But would have it shown how *Ireland* is the cause, as is said, by breeding so many more sheep, because their cattle are forbidden here. Land here, by that consequence, will be turned into breeding cattle, as *Ireland* is said to be for sheep. In *Ireland* there was a great rot of sheep likewise; there was one with him, who, within six months, had been in *Ireland*, and assured him sheep sold dearer there than in *England*. Those lands, on which they breed cattle in *Ireland*, are not fit for breeding sheep, as you have been told. It will rot them if they breed them off ground of two shillings an acre, and cheaper; and they will breed better than we can do on ten shillings an acre, besides the largeness of the acre; and that they can do it with fewer people than we can; and our land, by repealing the *Irish Act*, may be reduced to the rate of *Ireland*. Would not therefore assign a cause for the fall of wool, where there is none. Upon the *Irish Act*, our lands did manifestly rise, and the repeal of it would fall all the land of *England*, at that rate, in time.

Col. *Birch.*] Desires leave to answer *Swynfin* who says, six sheep of ten died of the rot. If we have now two or three years wool by us, how many more years should we have if no rot?

Mr *Swynfin.*] *Birch* has strengthened his argument for the *Irish Act's* not being repealed—Will make it appear, that this Kingdom has lost a million before that *Act*, and *Ireland* hath made a *Scotch* and *French* Trade.

The Speaker.] It may be made appear that *England* is worse by a million for it.

Sir *Nicholas Carew.*] Since you have made Bills for prohibiting wool, and *Irish* cattle, the price of wool has

has fallen. For experiments, if one way will not do, we must try another. He is for limited exportation of wool—But you cannot hinder wool going out of *England*—Therefore would refer it to a Committee.

Mr Boscowen.] If you export wool, you will have most of the Clothiers about your ears—Would not encourage that experiment. You should take a course for exporting the manufacture. The Companies of Trade should take care to export more. The *Irish* Act is a very remote cause in this. 'Tis a vain thing to believe that all *Ireland* will breed sheep in their bogs. If their cattle should come in, there would be as great a cry against cattle as now against wool. All your cattle must fall. For one shilling, an acre may be had as soon as for twelve here—Vessels for transporting cattle here will be, in effect, a bringing *Ireland* hither. The merchants find the woollen trade dead, and therefore must we repeal the *Irish* Act? Whereas all trade is dead also,

Mr Love.] Suppose the *Irish* Act were repealed, what would you do with more than you could spend? As for that of yarn, it would be the last experiment you are like ever to make—Cockets would be produced, and customers hands and seals counterfeited. Other men can sell cheaper than we can do abroad, the duties are so great on dying commodities, and allum twice as much as formerly. If ever you will reduce the woollen manufacture, some extraordinary course must be taken.

Sir Charles Harbord.] This was projected first by Sir William Cockayne, who erected a new Corporation, which continued four or five years, and the proprietors got masses. But when the people saw that their bread was taken out of their mouths; when comes the severity, that men of great learning, if not entirely conformable, must not be preferred; they went abroad, and many clothiers with their looms went with them—Eight gilders in *Holland* is thirty shillings here—In *Leyden* were made 28000 cloths, and 8000 pieces of blanket, This was a monstrous thing—Your cloth, not taken off well, must lie upon your hands. This has undone the

wool-grower; he has four or five years wool upon his hands. If you take no remedy in this, all the wealth of *England* will swim into *France*, and other parts.

Mr Papillon.] If we drive all the wool into *France*, they will out-do us, and *Holland*. Some say, 'tis the *East-India* company—But they send 40,000*l.* worth away yearly. To *France*, whither we used to carry 40 or 50,000*l.* worth yearly, we carry now not forty.

Sir William Coventry.] *France* is thinking of getting a trade we have not—Would be loth yet to come to the experiment of transporting wool. One pound of wool, manufactured here, is better for the nation than seventy that are not. Those advise you best, that tend to exportation of your manufacture, or spending it at home. In King *James's* and King *Charles's* time, we had almost the sole manufacture of wool—They find that gentlemen affect not the coarse, and the *Dutch* made fine thin cloths of *Spanish* wool, and out-vend us—Upon the comparison of cattle and wool, *Irish* cattle must be brought alive, and must eat, and cost dearer abroad than at home; together with the hazard, on ship-board, of bringing the same, and dying, and spoiled, together with the charge, &c. Great value may be brought over in wool, and little in cattle in a vessel—It is very good to use more woollen manufacture at home; but that is not all; we shall be poor if we export not our manufacture. If wool should be exported, the product of so many hands would be gone also—As to the argument, that the product of *England* is much increased, though the rise of land is not, by clover-grafts, liming and watering; yet we have fewer people than ever we had, and more product, by the plantations, *Ireland*, (and speaks not of the plague and war) which continually drain from us. He likes the expedients of free exportation of the manufacture—But if land be not otherwise employed, we shall ever be decreasing. The most obvious way (to him) to remedy this, is the planting hemp and flax, the best, if not the only, remedy to help us; and, in spite of all remedies, when the merchant cannot vend, and the clothier cannot make

make cloth, the people will mutiny. Hunger will break stone walls. Hands may be numerously employed in the manufacturing of hemp; but, as it now is, we have money sent abroad for linnen—When a plenty of corn comes, we have as much cry for the cheapness of corn, as we have now of wool.

Mr Sacheverell.] He wonders to hear gentlemen offer at this of bringing in *Irish* cattle. None can deny but that their coming in must lessen the price of our breeding cattle. In the county of *Derby*, it has brought our cattle almost to nothing, and will do so again; and many breeding counties will be destroyed by it, for the sake of two or three. He can never agree to it.

Mr Garroway.] If you suffer only the inhabitants to seize, and they make a fraudulent composition about these cattle, your Act will never take effect—They bring in daily alive, and in barrels.

Wednesday, November 10.

Upon a proffer to report the Bill of illegal Imprisonment, &c, the Speaker jestingly said, “it should be reported next after Sir William Killigrew’s Bill.”

Debate on the Conference sent to the Lords, about [their changing the Vote for] recalling his Majesty’s subjects out of the service of the *French* King.

Sir Thomas Meres.] The Lords have given us no reasons why they join not with us in this Address. ’Tis but *actum agere*, to do the same thing again by Proclamation—As we had not the liberty to tell our opinion, believes it invalidates the Act, and will only produce a Proclamation, which may be much more effectual than this. But would reserve that claim to the House, that we are not altogether without power of giving our opinion of things.

Sir John Duncombe.] The Lords have been cautious, What they have said does not forestall your Bill—Would agree with the Lords in another Proclamation, rather than search too much into this. Would avoid all occa-

sion of dispute with the Lords, and have two or three days time to consider of this.

Mr Powle.] Would avoid all occasion of quarrelling with the Lords. But he thinks, if you agree, you will invalidate your Act. Why would you not stay to see the effect of this, till you have passed your Bill? Would have it put off till *Tuesday*, and prepare the Bill by that time, which is still but an *Addres*.

It was adjourned accordingly.

In a Grand Committee, on the state [and condition] of the kingdom.

Sir Thomas Lee.] It is for all concerns that justice be free. He finds in a *Gazette*, 1674, published to the world, “Two Justices of the Peace, who, by Act of Parliament, are to hear and determine differences arising between the Excisemen and the Ale-Brewer, about the *quantum* of money, to terrify their proceedings, as a warning-piece to others, to deter all neighbours how they do justice again;” and farther, that the King declares the Law at the Council-Table. If so, he knows not the use of the Statute of the 16th and 17th of the late King. If this be done at the Council-Table, the next thing will be to controul *Westminster-Hall*, and the Exchequer, and why not against merchants for duties, and demand of the King’s Bench, why they grant *Habeas Corpus*’s? Would apply to the King, that these mischiefs may be checked in time.

Mr Williams.] This thing has been long in his thoughts. In the Act for the Excise there is an Appeal from the particular Justices to the Sessions, and they are no farther troubled. He is a Justice, and instructions have been brought him contrary to the Act, which is to take the gauger’s charge. They stopped not at these instructions—He has been cited for non-administration, that he has not proceeded according to the instructions. He and his neighbours have been troubled in it. But the law has been his refuge.

Sir

Sir John Duncombe.] The proceedings may not have that aspect they are said to have. He never yet sent for any one man in his life. In two years time, he knows, nothing occurs to him of this kind. It falls out in this business of the Excise, where, in Corporations, the Justices are the judges of the cause. There is seldom any dispute in the country, where gentlemen are the Justices. In Corporations, there is a combination of kindred, very partial to one another, and they are the sole judges, and they, in time, will overthrow the Excise itself. He knows not how that particular case came into the *Gazette*; but the man confessed himself in the wrong, and said he was sorry for it, and went away, and no farther proceedings were against him. Where is the hardness of all this, so seldom and rarely done? Not in two years time such another instance. He wonders how it came into the *Gazette*—Though the Council-board declares not law—Yet when the Council is in an extremity, by whom shall they be informed? Shall a man not know his own right? If the Judges give an opinion, that it is law, the Council goes by it. He will not say, that *Williams* is in the wrong, but is sure the Council is in the right, when the King advises with the Judges, and his Judges—And is sure 'tis such as they will answer. He thinks not theirs the least failing in the King. If you knew but the circumstances, they would reveal it—And he has endeavoured to do his master right, and the people no wrong, from the bottom of his heart.

Sir Thomas Meres.] He believes that the King had advice in doing this; but our complaint is of that advice. He thinks that the instructions sent into the country are not law, and he obeyed them not, and was not sent for up. This is no new Question; it has been debated in his town eight or nine years. The short of the Question is, whether the gauger's charge shall stand good to all quantity of liquors. Show that in the Act of Parliament, and he has done. The Act is plain in the directions of judgments, and Appeals to the Sessions. Proceeding by these instructions, the poor Ale-brewer calls the Exciseman

forsworn wretch ; and that's all his remedy. The Justices are brought to the Council, as if it were before the Judges, or the Exchequer-chamber. 'Tis of general concern, and would take away a great deal of heart-burning, if these instructions were taken away, that the gauger's charge should not stand good. We had a clause here, and the Lords sent one to this purpose, and 'twas reported. If it be not Law , he knows not what power the Privy Council have to declare it so

Mr Sawyer.] You have not yet examined this thing thoroughly. To say, generally, that the King cannot send for Justices of the Peace to the Council-Table, on male-administration, no gentleman will say so—If the cause be dismissed, the King and Council have done him right. 'Tis not ripe at all to say it is a grievance, till it be farther examined, as whether according to the opinion of all the Judges. A charge the gauger is, but not such a one as to judge the parties by ; 'tis only to put proof on the parties on the other side. Therefore to address the King for remedy for we know not what, is strange.

Mr Williams.] Moves to have it ordered to be referred to the Committee, to enquire by what Counsel this was done. This power of the Justices of the Peace has its creation from the Act, a negative part of it, and a positive, excluding all other ways—If for turning the Justice of Peace out for misdemeanor, the Council has done it. But the Act is not pursued in punishing and reproaching men for not pursuing the instructions.

Mr Sacheverell.] Speaks not upon the circumstances, but that the Council should persuade the King to over-rule a judicial power, which, by Act of Parliament, has been given to the Judges—And when the King takes upon him the exposition of the law, against law itself, he must call that an arbitrary power, when against the letter of the law, and the opinion of the Judges. Twelve witnesses were examined in this matter, whether it was beer or ale, and all agreed 'twas barely beer, and not ale ; and the Justices, parties unconcerned, gave judgment for beer,

beer. The gaugers, by this way, are parties and judges in their own case. The Act says, 32 ale, and 36 beer—The Justices are sent for up to the Council, and the King was pleased to give judgment, that the gauger's charge was a sufficient judgment—Persuaded to have the King's pardon—On this single charge of the gauger's, they all paid it. He therefore seconds the motion for an Address to the King about it.

Mr Waller.] Has heard somewhat of Sir *William Wentworth's* argument from him before. You are told of the rebellion in the Long Parliament. Would let all people know, that, if they *have eaten four grapes*, our *teeth are not set on edge*, and we have not forfeited our rights for their ills. In the row of our Kings, there are as few ill as in any kingdom. King *John* was a tyrant, and killed his nephew, [Prince *Arthur*] and had a design to bring in foreigners. Shall we give the King less loyalty, because he hath had an ill predecessor? We have the same power as before the Act of Oblivion passed, for particular men; and shall we not have the benefit of it ourselves? As to that particular, said to be done by the King's Counsel at law, they are not the surest Council. They are, as good advocates for the King, but not as Judges; but they are his Counsel, and have been asked, as it may be again. Before Mr *Hampden's* case, the King consulted the Judges; and he thinks 'tis part of their oath, to give the King true counsel. 'Tis said, that the Judges counsel was, that ship-money was lawful; a Judge, a friend of his, said, such counsel was given; and 'tis said by all the Judges, who have a fashion, that the judgment of the major part is subscribed by all of them, not saying whose advice it is in particular. 'Tis the natural way for the King to consult his Counsel at Law; if he has done so, then the Council-Table may be excused. The Judges have judged wrong, and formerly it was our way to complain of the Judges; and the Lords were advised with, as in the case of Ship-money. If the King's judgment be by the advice of the Judges, we are

not then to go to the King for redress, but to the Lords.—If not, then to go to the King.

Mr Streete.] Knows not what end their judgment may have, if not traversable—He must say, they do practise such a judgment, and that now for the gaugers; but he takes the Law to be otherwise. You'll have delay in an Address to the Lords about it. But would have the opinion of the House, by declaration, that it is against Law.

Sir William Coventry.] Proposes, that we should declare the Law in this matter, and go to the Lords for their concurrence. He easily imagines the success of that. The Lords will tell us, we meddle with what belongs not to us. He is against ravelling into the matter, as who was the author of these instructions. But hears a complaint, that judgment is given where the Law has not lodged it—in the gauger; and it was never intended that none should judge over him. When there is a Question in doubt, the gaugers can find better Counsel, to open the eyes of the Judges, than the poor brewers. The Judges, if not supplied otherwise with better information, make their judgments, as either party can make their case out. When it is a grievance to the subject, 'tis our part to remove it. This is excluded by law from the Council-Table, to declare law, and would have it represented to the King, that no new instructions may be super-induced upon the Justices of the Peace, but that they may be left to judge according to law.

Col. Bircb.] Must needs say, that the honourable persons concerned in this matter, wherever they could, have compounded these complaints, if possible. He believes, that, by the countenance of these instructions, the gauger leaves no return; and if the brewers enter one gallon less, they take them on the forfeiture. The gauger will do it, as soon as it is brewed, and will then say, it is ale, whilst the strength is in it. 'Tis said, that the King may send for a Justice of the Peace—but they are rather Judges, than Justices, in the matter. *Wentworth* would have no representation, because, in the Long Parliament, they

they were numberless; but if we hope, in this, to have remedy, and not the same thing again, would represent the grievances, one by one; and this is the way to it.

Mr Sawyer.] Would see these Instructions, and what the Council have done upon it; how they stand. It may be legal, or illegal, according as the matter is. The Justice may neglect his duty, and it is in the King's power to remove him, if any man upon his cognizance tells you the whole fact.

Sir Thomas Lee.] The Judges commissions are now *durante bene placito*, and not *quam diu*, &c. as formerly—He thinks this good evidence in the *Gazette*, and published by good authority; else the Council-Table would have corrected it before now. (*Reads the advertisement in the Gazette*) This is, as to the Excise and gauger, a declaring the law, and as much a judgment as they could give in it, to the intent that other men might take warning.

Sir John Duncombe.] Thinks the thing is of the first edition, and hopes it will be of the last. Things are not usually brought hither, but upon the last extremity—Would remedy this—But he fears that the consequence of this day's Debate will break the Excise in pieces. The farmers will catch at your Debates, which you intend well; and the King will suffer by it. This being but one precedent, and unadvisedly brought to the Council, he would have farther proceeding, &c. The law is good, but hears the practice of the Justices. This thing had not its steps as it ought to have; but to make a severe judgment upon it may spoil the Excise itself.

Mr Vaughan.] The Instructions are either legal or illegal, which you have made by an Act, reversed by the Privy Council; and their judgment is taken away, by law, for explaining the law.

Sir Thomas Littleton.] The Question is not, what the Instructions were, but that there were any. Put the case, that they go for remedy to the Exchequer; it would be strange, if from them, who are judges of the Revenue, the matter should be heard over again at the Council-Table,

Table, and be judged there a wrong judgment, and the parties be forced to acknowledge their fault. He knows no kind of difference. At the first 'twas thought a light thing, but now sees it of great consequence.

Sir Thomas Meres.] Some Justices at *Lincoln* were sent up prisoners, and paid sixty pound fees for a matter of this nature, and were glad they got off so—(*He reads the Proviso out of the Act.*) “The differences, &c. to be determined in the proper county, and not elsewhere.” The Excise so raises the Exciseman, and impoverishes the people at this rate, that he moves that it may be stated, and so done, and how to do it leaves it to you.

Mr Powle.] These instructions are of a dangerous nature. He has seen many instructions under the name of the Sollicitor and Attorney General, very prejudicial to the people, and contrary to law, to raise the revenue, and those printed and urged upon them.

Sir Thomas Meres.] The *Gazette* is published by authority, and may have the effect of a Proclamation in remote parts.

Mr Secretary Williamson.] What is in the *Gazette* is not schemes for the interest of the nation. The *Gazette* is, in some measure, under the care of the Secretaries of State, but not wholly of their penning. The Advertisements are the clerks. He sees there is great stress laid upon it, in terms so high “as the King and Council to have declared the law.” But take the thing where it is authentic. (It seems there are pains taken to have the *Gazette* so ready.) He joins in the motion to have the authentic pieces of the whole, and then judge of it as you think material.

Sir Tho. Lee.] 'Twas not a particular advertisement, but only news that week from *Whitehall*.

Sir Tho. Meres.] This is such a publication as edicts in *France* have, and it terifies Justices like the effect of a law.

It being moved, “That the illegal summoning,” &c.

Six

Sir John Birkenhead.] Is for the word, “illegal” to poison it.

Sir Edward Deering.] You have had a complaint this day against a Sheriff *, and you summoned him before you condemned him. Sure you will have more respect to the Council Table than to the best Sheriff of *England*.

‘Tis moved that part of your Address be, “That no instructions, declaratory of law, may be, for the future, sent from the Council Table.” Instructions for execution of the law are, and ever were, entrusted to the Crown.

Resolved, That the summoning of Justices of the peace to the Council Board, for their proceedings in matters judicially before them, relating to the Excise, is a grievance, and shall be one part of the matter to be redressed in the state of the Kingdom.

Sir Thomas Clarges.] For point of carriages, as exercised by the King’s Council, the law is perverted. Justices are summoned to the Council Board, and severely handled, and he is one of them. The Justices draw warrants for summoning the carriages, and if they do not send them to the high constables themselves, they are complained of. They suggest five or six, and send for twenty, and have no occasion to use them, and come fifteen miles, and they send them back again. They allow six pence a mile from St. George’s Church home, not accounting from St George’s to the place where they receive loading.

Mr Secretary Williamson.] Tis not judged at the Council table, but put only in a way to bring it to the law.

Sir Lionel Jenkins.]—Would not have it “judgments” for this may be very extraordinary and arbitrary—Would have it “judicially proceeding.”

Sir Thomas Clarges.] Knows not why the Justices are sent for to the Privy Council. If they do not their duty, there lies an information against them in the King’s Bench.

* The High Sheriff of Suffolk for not returning the Writ for the Borough of Eys.

Mr Secretary Williamson.] There was a riot in *Westminster*, 1500 in a Commotion; the Justices would not stir to prevent it, and were therefore sent for to the Council Table.

Sir Thomas Clarges.] He thinks that the Lord Keeper and the Secretaries of State are Justices as well as they, and would know what they did in that riot. Why may not we say, why not you brother justice? And why not you? Let them give you an account of it.

Sir Thomas Lee.] The thing is, whether the Council Table is a place for Justices of peace to answer their actions at; whether law is there to be declared. He thinks that, for the riot at *Westminster*, an information in the King's Bench against the Justices was more proper. All this summons is but to frighten people from things they would not have done.

Sir John Duncombe.] 'Tis said, "summoning Justices of the peace in matters judicially depending before them"—If he should not open the matter, he should be failing to the House, and to himself. If a corporation shall judge, and give a wrong judgment, what shall the King do in this case, to do himself right, and the public?—Is it not a reasonable thing that when a wrong judgment is given, the Council can but enquire to be informed, and all sides are heard. Is this a grievance? You leave the King upon the hardest terms—By charge in other Courts, you will make men abandon Corporations, and ruin all trade.

Mr Sawyer.] Put the case that the King be injured by a wrong judgment of the Justices—Better a mischief than an inconvenience. The best law in the world has some mischief to particular persons. The King has the placing and displacing of the Judge, so that the Judge is in his choice. As to the Objection, that, in Corporations, where, by ancient Charter, the Mayor is a Justice in his year, and that year after also, and shall give a corrupt judgment—'Tis better such an information should be against him in *Westminster Hall*, where the thing would be infinitely more exemplary, than at the Council

cil Table. If any thing in the Act, or if the Act of Excise be ill penned, what fits the Parliament for, but to mend these inconveniences?

Sir *William Coventry.*] Our grievance is, that which is our law goes not on as our law ought to do. The other clauses perhaps were not given in the Act of Excise, but for the sake that gentlemen should not be drawn out of their country to answer the matter, but in its proper place. He fears that these Debates may prejudice the Excise, but the fault is in the farmers, not here; had they gone on in the methods they ought without vexing the people—But whilst 'tis our law, let us enjoy it, and let not the people be drawn out of their country; and, in the mean time, would have as little noise of it as may be.

The Question mentioned passed.

Mr *Powle.*] In H. IV. H. VI. and somewhere in a Statute of H. VII. the Lords of the Council have some power in case of riots. But 'tis sufficiently declared by these Statutes, that the Privy Council is no Court of Justice—Only for advice of foreign affairs, leagues, peace, and war.

Resolved, That a Committee be appointed to examine these instructions that have been sent into the country, relating to the Excise, and Hearth-money, and to report the same to the House.

Sir *Thomas Littleton.*] There is great complaint of the poverty of the nation. He imputes it much to the trade we have with the *French* nation, which out-balances us. By the scheme given in, there is a million *per ann.* difference, and 'tis one reason, among others, that was given, why this 300,000*l.* would be so hardly collected, That shortly the Kingdom would be in a condition to give no more money. He moves that another general head may be, “The neglect of a due treaty about regulating the *French* trade, one of the great reasons of the poverty of the nation.”

Thursday

Thursday, November 11.

The Bill for exportation of Wool [was read the third time*.]

Sir Thomas Clarges.] Many times, formerly, Charters were taken away, that were against trade—Moves that this Bill may be withdrawn, and that a Committee do consider whether it is fit to bring in another Bill.

Sir Richard Temple] In Ed. III's time, this of wool was a certain trade, and a merchant must have a certain trade and host got, and then wools were transported and manufactured abroad, but the trade was inconsiderable then in the nation.

Gustavus Adolphus, King of Sweden, being asked what place he would most willingly be King of, said, "of Newcastle. Being master of that coal, he would quickly master England, by straitening London." Applied to transporting wool †.

In a Grand Committee on the Supply. Sir John Trevor in the Chair. The Clerk read the Order false, *viz.* "The Committee to consider of a supply for building more ships."

Sir Thomas Littleton.] Was one of the voters for appropriating this money, this supply, for building ships only. You have already given your negative for this money to be placed in the Chamber of London; he proposes therefore that it may be paid into the Exchequer, and be appropriated to the building ships, by penalties to be inflicted on the officers of the Exchequer, if the money shall be applied to any other purpose.

Sir George Downing.] If it be appropriated with penalties only, the thing will be done.

Sir Thomas Meres.] Shall have great confidence in the thing, when 'tis done; a good execution of fact will satisfy the thing—Howard affirmed it might be done in the Exchequer, and so did Downing. He shall have

* This Debate is not mentioned in the Journal, nor does it appear whether the Bill passed or not.

† This saying was more probably applied to the Bill for ease of the Coal trade, which was read the first time this Day.

confidence when he finds the thing done, because he has been deceived, and would not be so again.

Mr William Harbord.] Would have the money be kept apart, and a distinct account kept of it from all other money.

Mr Sacheverell.] This is no new thing practised, but done in the greatest Kings reigns, *E. I. H. IV. H. VII. H. VIII.* The Exception made, “That it looks like distrust,” is nothing. *6 H. IV.* There was some occasion to raise money—Tonnage and Poundage were appropriated for uses—The way was this; they constituted two Treasurers, to whom the money was paid, for those uses. Those two, and all the Officers of the Exchequer, were accountable for it in the next Parliament; that if by any warrant, patent, or written order, by Great or Privy Seal, this money should be paid to any other use, than that it was granted for, as well those who grant them, as pay the money by virtue of them, should undergo the penalty of High Treason. After this, the Treasurers were sworn at the Lords bar, for due execution of their office—One year and a half afterwards, they accounted to the Commons, and they had a discharge from the Lords and every Commoner of *England*, who have an undeniabie right to the same, as they pay the money to have an account of it.

Mr Waller.] Would send for the Record; the Clerk of the Parliament has it. He was here in Parliament, and saw the Treasurer account for the money given in the *Palatinate War*, in King *James's* time, in the next King's reign. He saw that Council of War here; they had chairs set them, and their hats on; they were some *Scotch*, some *Irishmen*. The thing is in minutes in the Statute, but set at large in the Record—More care must be taken in this than they did. 'Tis not strange that the Commons should be more trusted than other Courts. The King is so far from being deceived by us, in Money, that we are they that give the Money.—*He said privately*, That the Fleet is but a lame arm to beg with.

Resolved,

[*Resolved*, That the Supply for building the ships shall be made payable into the Exchequer, and be kept separate, and distinct, &c. That penalties shall be inflicted on all officers who shall divert, or misapply it; and] that the account for the said Supply shall be transmitted to the Commons of *England* in Parliament [which was agreed to by the House.]

The Speaker took the Chair.

Sir *Thomas Meres.*] If there be not an Appropriation of the Customs, he believes we may be called upon again for Money.

Sir *William Hickman.*] Seconds the motion for a Clause in this Bill of Money, “for appropriating the Customs.”

Sir *John Birkenhead.*] It is not usual to put a perpetual Clause into a temporary Bill.

Sir *Thomas Meres.*] Before you appoint a Committee for drawing this Bill of Money, would know what we are to have drawn, by Order of the House. And the next Question is, that you have such a Clause.

Sir *Richard Temple.*] 'Tis the constant Order of the House, that you give no farther instructions to the Committee, till you have voted a Bill. 'Tis the work of a Committee to make two Bills one.

The Speaker.] He is at the greatest loss in the world how to serve the House, when a thing is Order one day, and not another. If you'll make this clause part of the Bill, it must be debated first in the House.

Sir *Thomas Meres.*] 'Tis good and safe what the Speaker has said—But did not agree to go to a Grand Committee, because he was afraid the Speaker would be against it. He likes so well what the Speaker has propounded, that he would have him leaye the Chair.

Mr *Vaughan.*] If we make not the Clause of the same nature, and in the same Bill, we are not like to have our Bill.

Sir *Thomas Lee.*] 'Tis as natural that ships, when decayed, should be repaired, as that new ones should be built, and therefore is for this Clause “of appropriation” to be in this Bill.

Mr Secretary *Williamson.*] This Clause "of appropriation," and the rest of the Bill, on the mother's side are not a kin, though they are on the father's side— You take away out of the King's Revenue, and yet he is of opinion that what possibly can be done in the matter, may be done. Would adjourn the Debate till to-morrow. But would not have a Committee sit this afternoon now upon it.

Lord *Cavendish.*] *Williamson* argues right. In one part, 'tis of a different nature. One is raising money on the land, the other on the sea. He gave his consent that money should be raised on the land, for the use of the sea, though 'tis extraordinary; therefore moves for a Clause to be referred to a Committee, "for Appropriation," in this Bill.

Col. *Birch.*] Is loth to show you that these two Clauses are too near a kin, for fear they should be too near to marry. He cannot believe they are in danger not to agree. The reason why this should be referred to a Grand Committee is, because that is not so slippery to go through as the House. This is a charge over, and done but to secure it, in going to the Committee, and you cannot do it now, it seems, without a dilatory way of raising money. What busines can this have at the Committee? He lays this down as a maxim, that if you take not away this course and practice of borrowing at interest upon interest, what can the nation have to keep it from ever wanting? There was a time once, when 2,500,000*l.* was given in yonder corner, (*where Paston moved it.*) When given, it was perfected in two days; and if you will devote this money to particular uses, you will go through the busines. There was borrowed, upon the credit of that great sum, so much upon interest, that 'tis not paid to this day. 'Tis the interest of particular persons to put the King upon borrowing. Gentlemen that take their half-years rents before-hand, will eat both land and rent before-hand—And what is the reason you press men for

the sea-service, but because you do not pay them? If ever you intend to have men fight, 'tis interest must bring men to you. If ever you intend to have a Navy, for the honour of the King, to be master at sea, this Clause "of appropriating the tonnage and poundage to the use of the Navy only," must be inserted in this Bill.

[The House divided upon the Question of adjourning, which passed in the negative [146 to 117.]

Debate on the Clause concerning the bankers security for money lent upon the Customs.

Mr Secretary *Williamson.*] Offers this, that nothing can stand between this Appropriation and you, but the impossibility of doing it—Would settle the nearest time for this matter, and set out the true state of the Revenue, and then you may judge whether it is capable to suffer this Appropriation; and, if it be not, would have gentlemen consider what they are doing with that which is for your greatest safety. Set therefore a short time to examine the state of the Revenue, and the consequences of this Appropriation, and go not now into it, when we cannot come out of it with that reasonableness the thing requires.

Sir *George Downing.*] He takes this Question to be of great consequence; it may be, more than is apprehended. If you will have a Clause in this Bill, it must be at a Grand Committee; but is utterly against giving a Committee such power, to make such a marriage. He says, ('till you vote it otherwise) it will be a detestable marriage. When you go in such an untried way, you may repent when it is too late. Things of this kind are altering the Government. The King's Answer to a Money Bill, is, *le Roi remercie ses bons sujets; accepte leur benevolence.* To a public Bill he answers, when he passes it, *le Roi le veult;* a distinct Answer for the Money-Bill. What Answer shall the King then make to this Bill? The King must make two Answers to this one Bill,

Bill, being of two natures. If this way come to be made a practice, what shall the Answer be? The King's judgment in passing Bills ought to be as free as ours, and it is for the kingdom's good it should be so. When once this way is made use of in one Bill, why not in another? 'Tis for our good that the King should come as free as we to passing Bills. The consequence else will be, either the King must lose the money, or pass the Bill. Therefore is against such a power to the Committee.

Mr Vaughan.] This very law of the Customs, given upon trust and confidence, for guarding the sea, has been broken. How was *Magna Charta* granted, and Money was annexed to it? 'Tis not so strange a thing therefore as *Downing* makes it. If the Customs will not renew the old ships, you must relieve new ships out of some new matter that you have not yet given.

Mr Powle.] Hears it said, "That, in giving this supply, we give nothing to the King."—The Commons have given nothing, or very little, to the King, for defence of the kingdom. If the Commons do give an aid for the sea, they give for support of the Government. This is giving to the King, and he is a gainer by it, by taking undue pensions and farms upon it—and the King thanks us for it. The Customs are at least 600,000*l.* *per ann.* That aid is not for the splendor of the Court, and Embassies.

Sir Richard Temple.] Such a Clause as this might be, when the King passed all the Acts together, and the King refused or passed what he pleased; but since the King must now accept, or refuse, all, and give one uniform Answer, therefore the Bills must be so. The Clause of Corn, in a Money-Bill, spoken of, was not remote to the matter, as is said. This of Appropriation is, to another Bill not yet brought in, and you break Orders in the method of it. If you will go on with it, would appoint to-morrow, ten of the clock, that you may be acquainted with the state of the Revenue. It was never the practice of this House to annex an impossible condi-

tion to an aid. You do by this Clause repeal your resolution, and overthrow what you have already done.

Mr Mallet.] There are instances, new and old, that may be given, of this way of annexing Clauses to Money-Bills.

Sir Thomas Lee.] Temple has convinced him, in this matter, more than he was before. He tells you, "that this money must be otherwise employed, and yet, that it is necessary the Fleet be preserved." He tells you ingenuously, that he would not adjourn the House, yet would adjourn the Debate—He says, 'tis proper for the Committee; but the House is not resolved of it—'Tis a strange way of saving time. This Clause is but applying the money to the use it was first given.

Sir John Hobham.] If he was satisfied that *Temple's* argument would convince any one man, he would hear him again.

Sir Thomas Meres.] Desires *Temple* may speak again, and believes he is so ingenuous, that he will not speak the same thing again.

Sir Edward Dering.] 'Tis unavoidable, that, if a man speaks to Order, he must speak to the merits too. He has often heard of arguments of inconvenience—We are all unanimous to apply the sum given to building ships only—Believes we are all of a mind, as to that. You are told, "'tis against Order—A thing of such weight, at this time of the day, to go into a Grand Committee.—And the King's giving an uncertain Answer to the Bill." All which he has not yet heard answered. To which he shall add, that it is not safe—And of great weight—The Bankers must be heard; and if for these, the Lords should refuse to pass this Appropriation, and the Bill of 300,000*l.* the account being to be made to the Commons, exclusive of the Lords, would you, for that, lose the particular Bill for Appropriation? Would therefore have the Bill single.

Mr Waller.] Certainly one cannot speak to the Question, without speaking to the merits of the cause. The confidence and trust of the Commons gave the King the Customs,

Customs, “for guard of the sea;” and so the Preamble of the Act for the Customs runs. ’Tis a great error to think that is not given to the King, which is for the common good, for our defence, and he is master of peace and war. He thinks this Bill cannot be without this Clause of Appropriation. It is thrown in our way, that the Customs are the subsistence of the King; and where is the money for ships? ’Tis said, “the King has subsisted on it,” and so he may on this money we now give. “The King subsists on the Customs.” This is plainly to tell us, we shall never have a Navy, but by a Land Tax—But he thinks, that neither the King, nor the nation, can subsist without this. As to subsistence for the King, finds it a rock in the way, and it must be removed. The King had purveyance for his subsistence, and pre-emption and composition; we found it of no use to the King, and we give him more in lieu of that. Can any man give such horrible advice? The most envious of our neighbours could not give worse, than not to appropriate the Customs. We give him better advice; to subsist upon what is given him to do it upon. But ’tis said, “’tis anticipated.” ’Tis some private bargain for private convenience—Put this into the scale against the support of the nation. What is the duty of a loyal Parliament, but to break these snares? We have it *de jure*, but *ex necessitate*; all naval forces in the world are maintained by the result of the trade of the sea. *Holland*, the *Venetians*, the *Carthaginians*, are all so maintained. To take this away, and put it upon Land-Tax!—Tonnage and Poundage are the straw for the fleet, and we are sent to gather stubble to make those bricks.

Mr Vaughan.] No man will distrust the King; but we find those that have violated laws. We find that, to our smart, the King has been misguided by ill counsels; but to have the King’s name used in such raptures, he cannot endure it—Every thing is “appropriated;” and shall other men interpret your laws to the King’s ruin? This squandering away will put the King so to it, that he cannot eat, but must come hither for it. The King ought not

not to be named in matters of offence, and we cannot bear it with patience.

Mr Pepys.] The King has rightly applied 350,000*l.* *per ann.* in the Navy. He asserts, that there has not been a year since the King came in, but there has been spent 400,000*l.* *per ann.* Would settle you in that for the present, and shall apply it more hereafter. It had been very well for the King, if the money long since had been "appropriated." He believes every one is for a reasonable Appropriation of the Customs; but whether now? He wonders it is so pressed, when most positively avowed, that the King cannot eat bread, if you do it; and many persons will be undone by it. Take all the fair means to be informed of it, before you pass this Vote.

Sir William Bucknall.] 'Tis a great mistake to say, "The King cannot eat bread, if the Customs be anticipated." Suppose all the Revenue was anticipated. If he apprehended this to be the case, would be as unwilling as any man to do it. *Proffered a paper.*

Sir Edmund Wyndham, Knight Marshal.] Wonders that the House is not so much swayed by reason as club-law. Moves that the accounts of the Revenue may be laid upon the Table.

Sir Thomas Meres.] 'Tis said, "that gentlemen have not offered reason in this matter;" and the great point of impossibility is urged upon us. When this comes to a Committee of the whole House, then these papers of accounts, and all things, may be exposed. 'Tis said, "What shall the King have to maintain his House, but the Customs?" By this Appropriation, the Navy-materials shall be 20*per cent.* cheaper; and this Appropriation not to commence till Lady-day next.

Sir William Bucknall.] He believes, they that tell you of this think it true; and they make the King believe the same thing they would make us believe. To talk of the Anticipation of the Revenue for three years, is no more than he to have anticipated his own Revenue for seven years to keep his wife and children! If he be rightly informed, this Anticipation is to pay pensions for two or three

three years to come, whilst the just debts are not paid, but the Pensions for two or three years to come. In rules of good husbandry, it is usual to pay off what a man pays most interest for. But the King pays the new debts, and the old ones are forgot. Doubts not but, when we come to a Committee, we shall find that the King is misled in the manner of the Anticipations, and his House—And that he may “eat bread,” and support the Government, and do what you desire, and a great overplus of the Revenue remain; would put the Question for the House to go into a Committee, to make as much of this as we can.

Mr Secretary *Williamson.*] Should have been beholden to *Bucknall*, if he would have given an account of this sooner. Would have time given him, and the shortest, that he may, in the House, or at a Committee of the whole House, and believes we shall be all of a mind to have what he proposes done.

Sir *Henry Capel.*] Is more concerned now than he was before, since *Bucknall* spoke, that we are not ready for a Vote. But since this Debate has been (which he thinks irregular) would appoint this matter as a head to be part of the Bill, and he will give his consent.

Sir *Thomas Littleton.*] Differs from *Capel*. We are ready for the main Question. Under a pretence of going into a Committee, 'tis but to talk the same things over again. Some gentlemen are against any Appropriation (*Was called to name them, and did.*) Sir *Charles Haborde*, and Sir *Winston Churchill*.

Sir *Winston Churchill.*] Said, he is mistaken—He is against it, till there is reason given that such a branch of the Revenue is misapplied, as has been said. Till that be, we ought not to appropriate.

Sir *Tho. Littleton* proceeds—As to arguments, that the King could not “eat bread,” he could name four or five more that used them against the Appropriations. He wonders that gentlemen are against it now, when we heard not of them when the Bill of Appropriation passed. But now they are to be annexed to this Bill, we hear of them. The debts upon the Customs are made an argument

ment also. When we were on the number of the ships, the officers of the Exchequer desired time, and concluded the Anticipation Money adjusted between seven and eight hundred thousand pounds. Every one knows, that the fine upon farming the Excise was 300,000*l.* Upon the Chimney Farm, 100,000*l.* as a fore-rent; and he is informed, that the Excise may be let for double that fine. So here is no hindrance from the King to take off these Anticipations. And there remains 900,000*l. per ann.* for the King to live on. Now, add the Wine-duty, 148,000*l.* or 150,000*l. per ann.* Chimney Money 150,000*l. per ann.* The Excise 550,000*l. per ann.* The Law Bill 20,000*l. per ann.* It may be a little short. And the little branches of the Revenue make up the rest 900,000*l. per ann.* Knows not what occasion there is to have recourse to any farther examination. Would conclude the matter, and spend no more time about it—Afterwards we may come to a Committee of the whole House; but why at the beginning of this business, being not raising of money, but what was debated before, and so not necessary to spring from a Committee, but from your Chair?

Sir Stephen Fox.] You are told, “That the Excise is no otherwise anticipated than Bucknall’s estate is for seven years, for the maintenance of his wife and children.”—The Excise is anticipated to the end of the farm, for one year. ’Tis said, there has been a great fine paid for it, but that carries on the expence of the House, and the forces. It was an advance, and no fine. A quarter, or near half a year, 245,000*l.*—229,000*l.* paid at one blow to the Navy; and 40,000*l.* to the Ordnance—Rises up to tell gentlemen they are under a great mistake, the tallies being only struck to January next—The Pensions will not come to a quarter part of the expence of the House.

Sir Francis Drake.] Those that have eat out the Crown Lands, he hopes, shall never eat out our Fleet too. He hopes you will put the Question.

The Question for Candles passed in the affirmative, 147 to 131.

Mr

Mr Boscawen.] One candle may always be on the table, when it grows dark, without a Question, and at a division, that you may see who goes out, and who in,

Sir John Ernly.] Hears a great discourse "of Anticipations."—He knows not of some sorts, but possibly they are not real. If you appropriate, before these Anticipations are discharged, you do nothing to the purpose.

Mr Sacheverell.] The last argument was, "That something was charged on the Customs already; and, therefore, not to appropriate all."—That may be some reason why the Appropriation cannot commence so soon.

Mr Secretary Williamson.] All the argument that remains with him, is argument from fact, and he would have that fact taken into consideration, relating to the Revenue.

Sir John Duncombe.] The Question is now, of appropriating all the Customs. He did not expect this Debate; he did expect you would receive the state of the Revenue, and he has it ready; and, when examined, you will possibly be of another mind. Take the matter of fact, and make yourselves judges of the subsistence and Revenue of the Crown, laid before you, and you are not till then ripe to judge. The Revenue itself is 1,300,000*l.* Then see how much of the Revenue is charged with Anticipations. There is between 7 and 800,000*l.* on the Customs. On the Excise alone there is charged 590,000*l.* and odd money. On the Chimney money 100,000*l.* and odd money. The Customs are not charged in course and time, but are actually now charged with 680,000*l.* With all this there is another charge on the Excise, of the Queen's, and the Duke's. This makes the Excise of no use, till the debt be eaten out. The Customs, at a balance medium, are 600,000*l.* *per ann.* The Chimney Money 151,000*l.* This makes, with the Excise, about 1,300,000*l.* *per ann.* The Law Bill is fallen to 20,000*l.* *per ann.* Some part of the Revenue must be left for accidents of farming; and if you take away the whole Customs, 150,000*l.* out of

the Customs, and 100,000*l.* out of the Excise, all that of the Customs is anticipated and received, and all goes then away, and the King has not one shilling to live on. To do so much, then, to him appears impossible.

Sir Courtney Poole.] Wonders that a gentleman of the Long Parliament should interrupt *Duncombe* in his discourse, who knows Order so well.

Sir Edward Baynton.] *Duncombe* has been heard more patiently to-day than any man, and wonders any man should say he is interrupted. But will rather sit still, than give the House an interruption—He came as fairly into the Long Parliament, and went as fairly out, as any man did.

Lord Cavendish.] He wonders that gentlemen should speak of the Long Parliament, which was the author of the most vexatious Tax upon the people that was ever known. *Reflecting upon the Chimney Money.*

Mr Boscowen.] If he could know how the Fleet could be maintained any way but by this Appropriation, unless by Land Tax, he would not insist so much upon it.

Mr Powle.] This is no distrust of the King, but of his Officers. 'Tis said, the King, by this Clause of Appropriation in the Money Bill, is not at liberty to receive the one, and reject the other. For that reason, he is for it. To do more than we have, is but for so many ships to lie by the walls.

Sir Thomas Lee.] Hears the Question asked, “How the King shall be the better for this?”—This is a sure way, that the Lords may come to a Conference—The Lords may hinder the passing of the Bill—They are near the King, and have Pensions—'Tis that the accounts of this money may come hither, and that the money may be for the King's use, and no reflection upon the King.

The Question being put, Whether the House would take the state of the King's Revenue into consideration, it passed in the negative, by 16 voices.

Mr Mallet.] The Parliament, in *Edward the Third's* time, had a great kindness for him, and gave him money with

with great caution, not that they mistrusted him, but a woman, called *Alice Pierce*, whom they mistrusted.

Sir *Lionel Jenkins.*] If the King has a right, he has the common right of all mankind, to be heard, before you give any thing away from him; and they must answer for what they do, as well as their meanest subjects—The King may be satisfied of one Bill, and not of another, and perhaps his Council is so too. If the Bills do not agree, the King is under a dilemma of sin, as the casuists say, of passing or refusing them.

Sir *John Duncombe.*] This will make a change of the Government, and put men upon desperation—The King may pay his debts by it, without being at the expence of your charge. Wonders that this cloud, from the bigness of a man's hand, should thus cover the hemisphere. He speaks this out of his faithfulness and zeal to the service of the nation. Would not have the Question put.

Col. *Birch.*] Says *Duncombe*, “This is a reflection on the King, and a shaking the Government;” but finds that all has been still supposition—He says, let him suppose too. Suppose there are Pensions upon the Customs, and suppose petty farms, and let any body answer for him, is it for the service or dis-service of the King? Or is this distrust of him to set him at liberty from those engagements, when he cannot in honour so well set his own arms at liberty? Let any man show him a better way to set the King at liberty, and he will hear him.

The Question being put, That the Bill for appropriating the Customs to the use of the Navy shall be annexed to the Bill for raising a Supply for the providing, equipping, and furnishing, the twenty ships, it passed in the affirmative, 151 to 124. [And a Committee was appointed to bring in the said Bills, so united and annexed.]